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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1348

WORLDWIDE CHURCH OF GOD, INC., ET AL.,

Petitioners,

v.

STATE OF CALIFORNIA, ET AL.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

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(Including Appendices A to I-1)

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

Summary

Petitioners[1] pray that a writ of certiorari issue to review six closely-related final judgments of the Court of

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[1] Petitioners are:

(1) The Worldwide Church of God, Inc. ("the Church"), incorporated in California in 1947, one of the temporal entities through which the Church of God, an unincorporated spiritual body, conducts its principal activities in the United States. Seven thousand of the Church's 70,000 members live in California.

(2) Ambassador College, Inc. ("the College"), founded by the Church in 1947 and incorporated by the Church in California in 1951 to train students for the Church's ministry.

(3) Ambassador International Cultural Foundation, Inc. ("the Foundation"), incorporated by the Church in California in 1975 to further the Church's mission of culturally enriching its members and the community and introducing the Church to the general public through its good works.

(4) Worldwide Advertising, Inc., incorporated by the Church in California in 1969, an agency through which the

Appeal of the State of California, Second Appellate District, Division Three,[2] denying petitions for mandate and/or prohibition to set aside (1) a connected series of discovery orders[3] and (2) an ancillary enforcement de-

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Church proclaims its gospel by means of radio and television.

(5) Gateway Publishers, Inc., incorporated by the Church in California in 1973, a company used by the Church to publish some of its books to aid in fulfilling its commission.

(6) Herbert W. Armstrong, Jr., the 87-year-old Pastor General, founder, and spiritual and temporal leader of the Church since its modern inception nearly 50 years ago.

(7) Stanley R. Rader, Armstrong's closest temporal and spiritual adviser.

(8) Ralph K. Helge, a long-time attorney and officer of the Church and its affiliated institutions.

(9) Henry Cornwall, a close associate of Rader and Helge.

Appendices A through I-1, which include the orders and judgments challenged in this petition, as well as the state statutes involved in this case, appear in the body of this petition at 1a-37a. Appendices J through Z-2, which include record excerpts that reveal the grounds on which the judgments below rest and the manner in which petitioners presented their constitutional objections below, are bound separately pursuant to Rule 23(1)(i) of the Rules of this Court, and are paginated 1b-328b.

[2] *See* Rule 23(5) of the Rules of this Court, permitting the filing of a single petition for a writ of certiorari seeking review of several cases from the same court that involve two or more identical or closely related questions.

[3] Those orders:

(1) compel petitioner Armstrong to appear for deposition with designated documents. Orders of Superior Court dated March 13, 1979, App. 2a, and July 19, 1979, App. 4a, petition denied by Court of Appeal on September 18, 1979, 2d Civ. No. 57303. App. 1a. *See* n.28 *infra*.

(2) direct the production of various documents by petitioners Rader and Cornwall. Order of Superior Court dated September 21, 1979, App. 13a, petition denied by Court of Appeal

on October 22, 1979, 2d Civ. No. 57640. App. 11a. *See* n.30 *infra*.

(3) direct the production of various documents by petitioner Cornwall. Orders of Superior Court dated August 8, 1979, App. 16a (also denying motion to dismiss complaint), and September 21, 1979, App. 18a, petition denied by Court of Appeal on October 4, 1979, 2d Civ. No. 57290. App. 15a. *See* n.30 *infra*.

(4) require the production of specified documents by former Church officials. Order of Superior Court dated August 31, 1979, App. 21a, petition denied by Court of Appeal on October 4, 1979, 2d Civ. No. 57445. App. 20a. *See* nn.31 & 32 *infra*.

(5) compel answers to interrogatories and direct production of designated documents by the Church, the College, and the Foundation. Orders of the Superior Court dated August 8, 1979, App. 8a, and August 31, 1979, App. 10a, petition denied by Court of Appeal on September 28, 1979, 2d Civ. No. 57291. App. 6a. *See* n.29 *infra*.

On February 8, 1980, the Attorney General declared his intention to move the Superior Court on February 25, 1980, for an order holding petitioners in contempt and for sanctions. Notice of Motion for Order Holding Specified Defendants in Contempt of Discovery Orders of This Court and for Sanctions. On the relationship between the overhanging threat of contempt and the finality and ripeness of the judgments below, *see* pp. 48-49 & n.76 *infra*.

As soon as the February 8, 1980, notice was issued, petitioners began efforts to prevent the use of contempt—or of any other sanction beyond that already imposed, *see* pp. 44-47 *infra*—to coerce compliance with the challenged orders pending this Court's review of their validity on certiorari. Thus, beginning February 8, petitioners filed numerous stay motions, petitions for writs of prohibition or mandamus, and other applications for relief in the Superior Court, in the Court of Appeal, and in the California Supreme Court. The latter court denied a stay of discovery on February 14, 1980, and denied a writ of prohibition against further enforcement of the discovery orders on February 25. The Court of Appeal on February 22, 1980, had likewise refused to stay the Superior Court's discovery orders; and, on February 25, the Court of Appeal refused to stay its own earlier judgments upholding those orders, and also refused to issue a writ of prohibition against further enforcement of those orders by the Superior Court pending certiorari. The Superior Court, in turn, has declined even to rule formally on petitioners' application for a stay; on February 25, that court simply deferred to April 2, 1980, the scheduled hearing on contempt and further sanctions.

cree,[4] all entered by the Superior Court of the State of California for Los Angeles County between March 13, 1979, and September 21, 1979.[5] The California Supreme Court denied review of the Court of Appeal's six judgments on November 16 & 21, 1979. App. 35a.[6]

The Worldwide Church of God, a half-century-old hierarchical church with an international membership of over 70,000, "has not been accused of any wrongdoing." App. 212b. Nonetheless, beginning on January 3, 1979, the Church was subjected to an unannounced, warrantless raid by armed officers of the State, who occupied the Church under a receivership for seven weeks in order to probe all of its books, records, and documents without limitation as

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Petitioners have thus exhausted all state mechanisms for suspending, during consideration of this petition, either the discovery orders challenged here, *see* pp. 18-21 *infra*, or the ancillary enforcement decree also challenged in this case. *See* n. 4 & p. 21 *infra*. Petitioners have been able only to delay a hearing on the imposition of still further punishment for their pursuit of appellate remedies in the courts below and in this Court.

[4] That decree stays all discovery by petitioners *from* the State, subject to modification at the request of any petitioner who abandons judicial challenge to discovery *by* the State. Orders of Superior Court dated August 8, 1979, App. 24a, and September 21, 1979, App. 26a, App. 307b, petition denied by Court of Appeal on October 4, 1979, 2d Civ. No. 57294. App. 23a. *See* n.33 *infra*. Petitioners' efforts to stay the Superior Court's orders pending certiorari, *see* n.3 *supra*, have extended to this enforcement decree. The decree has not been stayed; further argument in the Superior Court on whether the decree should be lifted pending certiorari has been deferred by that court to April 2, 1980.

[5] *See* nn.3 & 4 *supra*. Arising out of *People* v. *Worldwide Church of God, Inc.*, Super. Ct. No. C 267607, these orders and decrees are described more fully at pp. 18-21 & nn.28-33 *infra*.

[6] Because the California Supreme Court's denials of petitions for hearing were refusals to exercise its authority, petitioners seek review of the judgments of the Court of Appeal, "the highest court of [the] State in which a decision [going to the merits of the Superior Court's challenged orders] could be had." 28 U.S.C. §1257. *See Sullivan* v. *Texas*, 207 U.S. 416, 422 (1908); *Michigan-Wisconsin Pipe Line Co.* v. *Calvert*, 347 U.S. 157, 160 (1954).

to time or subject matter.[7] That raid and receivership were arranged at a secret meeting, held prior to the filing of the State's complaint, between the Attorney General of California, several disaffected Church members and their nominee for receiver, and a superior court judge. App. 156b.[8] The receivership was stayed when Church members posted a $3.4 million bond on March 16, 1979,[9] when the Superior Court had issued only one of the discovery orders challenged here. But the Attorney General is now pursuing the objectives of the receivership through the civil discovery orders sustained below—indeed, with the benefit of thousands of Church documents seized during the State's initial, seven-week occupation under the receivership.[10]

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[7] *See* n.23 *infra*.

[8] *See* n.23 *infra*. Hillel Chodos, the private attorney at whose behest the Attorney General brought suit, *see* Declaration of Hillel Chodos, App. 311b, was deputized to represent the State in this action from the beginning. Minute Order of Superior Court, *Rader* v. *Chodos*, Super. Ct. No. C 275207 (December 31, 1979) (finding in defamation suit). Chodos pressed the State's assault on the Church in cooperation with Deputy Attorneys General Lawrence R. Tapper, James M. Cordi, William S. Abbey, and Lauren R. Brainard.

[9] On March 12, 1979, the Superior Court set the stay bond at $1 million. *See* App. 61b. On March 16, 1979, Church members posted a stay bond of $3.4 million. On March 22, 1979, the California Supreme Court refused, by a four-to-three vote, to grant a petition for hearing or a petition for extraordinary relief from the receivership thus stayed by the posting of the bond. Petition for Writ of Certiorari, App. A, No. 78-1720. Because the receivership had been stayed and was subject to review on direct appeal in the state courts, Cal. Code Civ. Proc. §904.1(g), the Attorney General urged this Court to deny review of the California Supreme Court's refusal of extraordinary relief as presenting no live controversy. Brief in Opposition to Petition for Writ of Certiorari 10-11, No. 78-1720. This Court denied review of that refusal on October 1, 1979. *Worldwide Church of God, Inc.* v. *California*, L. A. No. 31091 (Cal. Sup. Ct.), *cert. denied*, 100 S.Ct. 172 (1979). No such lack of live controversy can be urged by the State here.

[10] *See* nn.23 & 24 *infra*. Previously seized documents both point the Attorney General toward possible areas of inquiry and suggest hidden meanings in what is discovered. As he gains access to in-

The Attorney General's jurisdictional premise is that "the People of the State of California, as beneficiaries of charities," [11] "have not only the power, but the duty, at any time to investigate all the [Church's] books and records, 100 percent of [its] books and records," App. 170b, (1) to determine whether—as the State alleges in this case—Church assets might have been diverted to someone's personal use, *e.g.*, *id.* at 4b, 6b-8b, 17b, 22b, 26b, 31b, and (2) to support its demand that Church officers be removed, *id.* at 9b, 22b, 33b, and that the Church's form of governance be restructured. *Id.* at 5b, 23b-25b.[12] A pro-

creasing numbers of such documents seized by the receiver or his agents, the Attorney General becomes increasingly able to probe the innermost recesses of the Church, combining (a) what was seized under the receivership with (b) what is obtained by subsequent discovery into (c) a *total* picture of the Church's inner life.

On January 29, 1980, the Attorney General noticed for February 15, 1980, the deposition of Bruce Bunner of Peat, Marwick & Mitchell, the accounting firm retained by the receiver. Having taken custody of 6,918 documents and records confiscated from the Church under the receivership, the firm was to hold these documents and records, pursuant to an agreement between the receiver and the Church, as an agent of the receiver, not to disclose them to the Attorney General without a prior court order.

On February 15, 1980, the Superior Court rescheduled Bunner's deposition for February 19, 1980, pending disposition by Mr. Justice Rehnquist of the Church's application for a stay of the Superior Court's order, filed February 15, 1980. Justice Rehnquist denied that application the same day, and the Church on February 17, 1980, reapplied for a stay with Mr. Justice Brennan, who denied that reapplication the next day.

On February 19, 1980, preparations were made for Peat, Marwick & Mitchell's production of the Church documents and records in its possession, but the California Supreme Court on February 20, 1980, stayed the Superior Court's order pursuant to which such production was to be made, pending disposition of the Church's petition for hearing, filed with the California Supreme Court that same day, to review the Court of Appeal's refusal on February 19, 1980, to prohibit enforcement of the order.

[11] State's Opposition to Demurrers to Second Amended Complaint 8-9, *People* v. *Worldwide Church of God, Inc.*, Super. Ct. No. C 267607 (September 14, 1979).

[12] *See* App. 79b and App. 90b for the State's formal demands for information and documents from the Church itself. The interroga-

tective order was denied petitioners on May 29, 1979, *id.* at 62b-63b; thus most of the information demanded by the State, if it prevails, would be exposed publicly, *id.* at 239b —without even prior *in camera* screening.

None of these discovery orders has been complied with yet, but each is reinforced by a coercive decree denying petitioners—so long as they persist in seeking judicial review of the discovery orders upheld below—any opportunity to defend themselves from the State's public accusations by securing discovery of pertinent information in the State's possession.[13] The moment anyone complies with one of those orders, of course, part of the Church's religious privacy will be irretrievably lost.[14] And if this petition were denied, the Church would be utterly helpless to avoid that injury, or to obtain an adjudication of any of the questions set forth below—whatever might occur in any trial or appellate proceeding in state court.

Because the Attorney General essentially seeks in this case an opportunity to probe the Church and to spread its inner life upon the public record, *see* p. 25 & n.44 *infra*, it

tories to and requests for production of documents by the College and the Foundation closely parallel those directed at the Church, and thus are not included in any appendix to this petition. *See* Rule 23(4) of the Rules of this Court.

[13] *See* n.4 *supra* and n.33 *infra*. Even before the coercive decree had been entered, the court-appointed receiver acknowledged that the State's very effort "to find out . . . if [the Attorney General's allegations are true" would inevitably harm the Church with adverse publicity. App. 147b. "But there would not have been the publicity that we had," the receiver observed, "if we'd had cooperation [from the Church]." *Id.*

[14] Although each opening in the wall of privacy causes irreparable harm, *see Maness* v. *Myers*, 419 U.S. 449, 460, 463 (1975), whatever remains private is, of course, entitled to continuing protection. Were the rule otherwise, a state would be rewarded for any invasion of religious or otherwise protected privacy, however egregious, since the victims of any such invasion would become fair game for repeated assaults once the first had been accomplished.

is crucial to recognize that the "pre-trial" orders upheld below are not interlocutory decrees entered in preparation for some more definitive confrontation, but are final awards of the precise relief the Attorney General claims as the State's due. *See* n.25 and pp. 48-49 & nn.76-78 *infra*. *Cf. Abney* v. *United States*, 431 U.S. 651, 658, 660 (1977); *Stack* v. *Boyle*, 342 U.S. 1, 6 (1951); *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541, 545-47 (1949).

Such further relief as the Attorney General also hopes to obtain after a full trial, *see* p. 25 & nn.45-46 *infra*, provides no occasion for this Court to delay review. First, the matter of further relief might well become academic were the Church forced to relinquish its privacy. Moreover, the probe and exposure upheld below are unconstitutional even without further imposition upon the Church. *See* pp. 26-31 *infra*. Finally, the very request for such further relief as a rationale for the discovery sought and sustained below aggravates the constitutionally impermissible character of that discovery. *See* pp. 36-41 *infra*.

There is, in addition, special reason to be concerned lest the Attorney General achieve his forbidden aims without ever having to bring this or any other church to trial. Chillingly, the Attorney General has referred to "other cases in which this office has involved itself in the supervision of assets held by religious corporations many of which were resolved short of trial and appeal."[15] The Attorney General's celebration of such out-of-court "resolution" of challenges to his supervisory authority over churches cannot fail to concern this Court—however well-meaning he may be. *Cf. Olmstead* v. *United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting). For any state's capacity to expose all the internal records and papers of a church upon mere suspicion and without even the check of a complete

[15] Letter from Attorney General to State Assemblyman William H. Ivers, January 31, 1979. App. 326b.

trial and appeal surely represents a most fundamental challenge to the regime envisioned by the Framers. *Cf.* L. Carroll, *Through the Looking Glass* (Harper & Brothers ed. 1902).[16]

Investigatory programs as ambitious as that exposed in this petition must not be allowed to sink from sight—whether through complicity or through coercion—without plenary review. Remitted to the shadowy world of church-state accommodation, such programs and the claims to power they embrace would continue—invisibly, and therefore unreviewably—to erode the wall that separates church and state, destroying the foundation and structure of religious freedom itself.

Opinions Below

The per curiam opinions of the Court of Appeal are not reported; they appear at App. 1a (2d Civ. No. 57303); 6a (2d Civ. No. 57291); 11a (2d Civ. No. 57640); 15a (2d Civ. No. 57290); 20a (2d Civ. No. 57445); and 23a (2d Civ. No. 57294). The minute orders of the Superior Court upheld by the Court of Appeal also appear at App. 2a, deposition appearance order item nine, and 4a (2d Civ. No. 57303); 8a (2d Civ. No. 57291); 13a (2d Civ. No. 57640); 16a (2d Civ. No. 57290); 21a (2d Civ. No. 57445); and 24a (2d Civ. No. 57294).[17] No opinion was rendered by the Supreme Court of California, which denied hearings in all six cases on November 16 & 21, 1979, by a vote of four to three. App. 35a.[18]

[16] *See id.* at 88 (The King's messenger is "in prison now, being punished; and the trial doesn't even begin till next Wednesday; and of course the crime comes last of all.").

[17] *See* nn.3 & 4 *supra*.

[18] *See* n.6 *supra*.

Jurisdiction

The discovery and enforcement orders of the Superior Court were entered on March 13, 1979, July 19, 1979, August 8, 1979, August 31, 1979, and September 21, 1979. *See* nn.3 & 4 *supra*. Adverse pre-trial discovery orders and rulings may be set aside in California only through writs of mandate and/or prohibition. *Daly* v. *Superior Court*, 19 Cal. 3d 132, 140, 560 P.2d 1193, 1198, 137 Cal. Rptr. 14, 19 (1977); Cal. Code Civ. Proc. §904.1. *See* n.75 *infra*. Such writs were timely sought in the Court of Appeal of the State of California, Second Appellate District, Division Three. The final judgments of that Court denying relief were entered on September 18, 1979, September 28, 1979, October 4, 1979, and October 22, 1979. *See* nn.3 & 4 *supra*. The Attorney General treats these denials as "affirmation[s] of [the lower court's] rulings." [19]

Timely petitions for hearing in the California Supreme Court[20] were denied by a vote of four to three on November 16 & 21, 1979. App. 35a. Within 90 days of that date, on February 8, 1980, Circuit Justice Rehnquist extended from February 14, 1980, to March 31, 1980, the time in which to file this petition for a writ of certiorari. This consolidated petition, *see* n.2 *supra*, is being filed before that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).[21]

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[19] Memorandum of Points and Authorities in Support of Motion for Order Holding Specified Defendants in Contempt of Discovery Orders of this Court and for Sanctions 13, *People* v. *Worldwide Church of God, Inc.*, Super. Ct. No. C 267607 (February 8, 1980) ("[T]he appellate courts have spoken in the form of these denials and have upheld the position of the [trial] court.").

[20] The petitions for hearing in 2d Civ. Nos. 57303 (filed September 28, 1979), 57291 (filed October 9, 1979), 57290, 57294, and 57445 (filed October 15, 1979), were timely filed in the California Supreme Court, which by order of November 8, 1979, accepted on that day the one-day-late filing of the petition in 2d Civ. No. 57640 (filed November 8, 1979).

[21] *See* n.6 *supra*.

Questions Presented

Under the First, Fourth, and Fourteenth Amendments,

1. May the innermost deliberations and documents of an entire church be laid bare through compulsory process and public inquisition to uncover suspected misuse of church assets by individual church officers:

   (a) without a judicial determination that the suspicion has some basis in fact?

   (b) without a judicial determination that less drastic alternatives would be insufficient?

2. May such investigation of a church proceed through discovery orders sought and issued in a lawsuit:

   (a) whose jurisdictional premise is that the church, being a charitable organization, has no private rights and thus is subject to continuing state supervision?

   (b) whose prayer for relief is that the church be restructured from hierarchical to congregational form and that its leaders be removed from their positions in the church and excluded permanently from any position of trust in the state?

3. Is such discovery permissible where it would exploit the fruits, and fulfill the objectives, of a temporarily stayed receivership that had commenced with the unannounced, warrantless raid of church premises and ransacking of church files?

4. For seeking to set aside the discovery orders issued in this investigation, may the church and its officers be penalized by court orders denying them any defensive discovery from the state, and thus any effective chance to defend their reputations, until they abandon their judicial challenges and yield to the state's discovery demands?

Constitutional and Statutory Provisions Involved

United States Constitution, Amendment I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ."

United States Constitution, Amendment IV:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Amendment XIV, §1:

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The California statutes involved in this case are set forth at App. 30a-34a.

Statement of the Case

I.

Petitioners challenge as unconstitutional a sweeping investigation by the State of California into the Worldwide Church of God, undertaken pursuant to an asserted state authority to examine all internal documents and communications of any church in the State—"without limitation," App. 233b, and "at any time." *Id.* at 170b. According to the State, "no privileges, constitutional or otherwise," *id.*, can block the inquiry's course "if there is the slightest hint or suspicion of wrongdoing," *id.* at 173b, for when a church

pursues its charitable mission within the State, "the usual principles are not applicable." *Id.* at 158b.[22]

The instant investigation began—at the instigation of six disaffected Church members—with an unannounced, warrantless search and seizure of Church premises and property, lasting from January 3, 1979, until March 16, 1979.[23]

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[22] At times relying upon an investigatory power over charitable corporations and trusts inapplicable to religious organizations by the very terms of the statute conferring such power, *see* Uniform Supervision of Trustees For Charitable Purposes Act §12581, App. 33a, and §12583, App. 34a, and at other times invoking a supervisory statutory authority over religious corporations, *see* California Corporation Code §9505 (superseded), App. 30a, and California Nonprofit Religious Corporation Law §9230 (effective January 1, 1980), App. 31a, the Attorney General has unambiguously declared that "the powers conferred by [these statutory provisions] are merely in addition" to his "common law supervisory powers over charities." State's Opposition to Demurrers to First Amended Complaint 10, *People* v. *Worldwide Church of God, Inc.*, Super. Ct. No. C 267607 (June 28, 1979). Thus the Attorney General asserts that his "supervisory powers over charities extend [ ] to *all* persons and *all* entities which hold assets in trust for charitable purposes, regardless of their organizational structure," *id.* at 25 (emphases added), and the Attorney General claims that he "could take the same enforcement action as [he] is taking in the instant case with regard to an unincorporated church, and the fact that [a] church has incorporated does not subject it to any more stringent supervision by the Attorney General than would otherwise be the case." *Id.*

[23] Although the State filed its initial complaint on January 2, 1979, on the relation of six disaffected Church members, App. 1b, the State pursued its suit against the Church without them. *See id.* at 12b, 146b, 195b, 201b-202b, 208b. *See* n.8 *supra* and n.34 *infra*. The complaint itself sets forth, entirely on information and belief, a variety of unattributed and undocumented allegations of financial misconduct by Church officers, accusing them of "siphoning off," *id.* at 4b, "pilfering," *id.* at 6b, and "liquidating," *id.*, assets of the Church for their own use and benefit, *see id.* at 4b, 6b-8b, of "shredd[ing] and destroy[ing]" Church records, *id.* at 7b, and—"the one cruncher," *id.* at 175b—of a supposedly impending sale of Church property in Texas below market value. *Id.* at 6b-7b.

Having been shown a draft of the yet-to-be-filed complaint in a secret, *ex parte* hearing on January 2, 1979, *see id.* at 157b, the Superior Court, in apparent violation of L.A. Superior Court Rule 7, §§1-2, and L.A. Writs and Receiver Manual, Rules 238(a) and

The investigation crystalized into a controversy ripe for

305, that day appointed a temporary receiver with no notice to the Church and with no finding that giving notice would be problematic. The Superior Court authorized agents of the Attorney General to begin a general search and seizure of Church offices and files the next morning, also without notice and with no warrant. *See id.* at 35b-37b. The State was not required to observe any such formalities here, the receiver explained at Church headquarters on January 4, 1979, because "this is not what we call an adversary proceeding." *Id.* at 146b.

> [H]ere there are no both sides. The Complaint merely wants an accounting. The Complaint says that there have been allegations that there has been a misuse of charitable funds. . . . All the Complaint wants is access to the records to prove or disprove that.

Id. at 147b. *See also id.* at 201b.

Thus the Superior Court's authorization of the instant investigation was sought and obtained on the theory that, because the Church of God exists under the laws of the State for charitable, religious, and educational purposes, its property "always . . . rests in the Court's custody, and [is] always . . . subject to the supervision of the Court on the application of the Attorney General." *Id.* at 158b. As trustees of a charitable organization, the Church's officers "serve at the Court's pleasure." *Id.* at 159b. On this theory alone, the Superior Court on January 2, 1979, invited the receiver to supervise the State's probe of the Church—"this bowl of spiders," as the Court described the Church. *Id.* at 164b.

The Superior Court concluded less than two weeks later that the below-value sale which it had regarded as "the one cruncher" among the State's allegations, *id.* at 157b, was a fiction, *id.* at 174b, resting upon "sheer speculation, conclusion and hearsay." *Id.* at 183b. The Superior Court also subsequently ruled that the State had failed to substantiate its claim that the Church was destroying, or had ever destroyed, Church records for suspect purposes. *See id.* at 215b. Nevertheless, although the State had utterly failed to support these key allegations, the Superior Court on January 19, 1979, continued the receivership, Order Appointing Receiver *Pendente Lite, id.* at 41b and 48b; the Superior Court, then as later, accepted the State's claim that "the slightest hint or suspicion of wrongdoing" suffices to create on the part of the Church a duty of complete disclosure. *Id.* at 173b, 179b. What the court had heard was "enough to raise an eyebrow." *Id.* at 212b.

The State had triggered a duty of virtually complete disclosure on the part of the Church by having made "the slightest showing sufficient . . . to raise the Court's eyebrow . . . that there

review by this Court through the issuance of, and the refusal to set aside, a series of discovery orders building

may perhaps be improprieties," *id.* at 179b, having raised "questions . . . which . . . place the court on notice that there might conceivably be some problems on the part of [petitioner] Rader with reference to the church." *Id.* at 185b. *See id.* at 182b, 212b. On this basis, the State was to control all Church books and records "without limitation." Order Appointing Receiver *Pendente Lite, id.* at 41b. All Church functions other than those deemed genuinely "ecclesiastical" by the Superior Court, *id.* at 45b, *see also id.* at 213b, 216b, were likewise to be controlled by the State. Finally, Church documents were to "be made available to the representatives of [the State] in this action, for use in preparing for the trial." *Id.* at 43b.

Various controversies arising out of the receiver's conduct in intercepting communications between the Pastor General and the Church's worldwide membership, *see id.* at 38b-40b, led the Superior Court on March 2, 1979, to replace the receivership with an injunctive order authorizing the Office of the Attorney General to proceed, without the aid of a receiver, with its full-scale investigation of the Church. *See id.* at 49b-58b. The Superior Court warned petitioners that an even more sweeping receivership than the one superseded by this injunctive order would be reimposed, however, if "one or two petitions come into this court with arguments made that [documents demanded by the State] involve ecclesiastical matters." *Id.* at 216b. Such arguments, the Superior Court warned, would be "evidence of bad faith" on the part of the petitioners, *id.*, since the court had concluded that financial and ecclesiastical matters were automatically distinguishable, each identifiably discrete. *Id. See id.* at 213b. *See also* nn.47 & 66 *infra.*

Petitioners appealed this injunction, thereby staying its effect. In response and without notice, the trial court on March 12, 1979, reimposed the receivership despite the Court's recognition of "the absolute right of the defendants and to take this appeal." *Id.* at 226b. The court explained that "the incredible resistance of the defendants to this audit . . . [has] to make a reasonable mind suspicious," *id.*, and rejected petitioners' argument that reimposing the receivership unconstitutionally penalized them for asserting their rights. *Id.* at 230b. The Superior Court did, however, permit the members of the Church to stay the reimposed receivership by posting a stay bond of $1 million, *see id.* at 59b-61b, and on March 16, 1979, the Superior Court lifted the reimposed receivership after Church members posted a stay bond of $3.4 million. The Superior Court ruled that, without any showing of factual basis or special need, deputies of the Attorney General would thenceforth be en-

upon that seven-week search and seizure,[24] relentlessly probing virtually all of the operations and deliberations of the Church.[25]

Arguing that the investigative enterprise constituted by those discovery orders itself impermissibly entangles church and state and indefensibly exploits prior state violations of the Church's First, Fourth, and Fourteenth

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titled to secure discovery of any documents sought in the exercise of "their good judgment and discretion." *Id.* at 219b.

Objecting to one especially instrusive State effort to secure discovery, petitioners argued that the State not be permitted "a direct pipeline into the [Church] computer," *id.* at 222b, on the ground that "there is privileged information on the computer," *id.*, disclosure of which to the State would violate petitioners' and others' First, Fourth, and Fifth Amendment rights. *Id.* at 221b. But the Superior Court refused to entertain any such objections "in advance" of the State's document discovery, *id.* at 222b, electing to rely on "the Attorney General's good faith" to protect the fundamental rights thus left at risk. *Id.* at 219b. When petitioners reiterated their objection that this approach would irretrievably sacrifice such rights, the Superior Court regretfully answered: "That is something I can't do anything about." *Id.* at 222b.

[24] Documents and information seized from the Church or from related persons or entities by agents of the receiver or by other officers of the State between January 3, 1979, and March 16, 1979, were to be made available to the State in its preparation for trial. App. 43b, 51b-54b, 60b. *See* n.23 *supra*. On March 23, 1979, the Attorney General notified a Congressman that the State was "currently reviewing information obtained by the court-appointed receivers," *id.* at 64b, and that "[a]ny future legal actions will be determined by that review." Letter of Attorney General Deukmejian to Honorable Douglas Applegate, App. 64b. *See* n.10 *supra*.

[25] Although the merits of the allegations in the State's complaint had not then been ruled upon—and, indeed, have yet to be tried—the Superior Court has not wavered from its conclusion of March 1, 1979, that the State is already "entitled to a full and complete audit." App. 218b-19b. The orders upheld below, *see* nn.3 & 4 *supra* and nn.28-33 *infra*, underscore the Superior Court's determination of March 12, 1979, that the State must be given "full access to *all* the books, records, . . . and the like," of the Church, App. 227b (emphasis added), once the State has made allegations sufficient "to raise an eyebrow." *Id.* at 212b.

Amendment rights, petitioners sought unsuccessfully to have those discovery orders set aside in the State's appellate courts through the writ procedure applicable in such cases. *See* p. 10 *supra* and n.75 *infra*. Petitioners argued, also to no avail, that the challenged orders—especially in light of the conditional stay of defensive discovery—unconstitutionally employ the coercive apparatus of state power to burden religious freedom and to place the fate of the Church and the privacy of its inner life in the hands of individuals whose sacrifice of confidential Church records at the State's demand the Church is powerless to prevent.[26]

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[26] In challenging the coercive stay order below, petitioners called the attention of the Court of Appeal to the State's effort "to drive a wedge between the Church and its leaders . . . [in the] apparent hope that by dividing . . . the State will conquer." Memorandum in Support of Petition for Writ 5, 2d Civ. No. 57294 (September 11, 1979).

Throughout the proceedings in the state courts—from the filing of the demurrers to the State's first complaint and to its amended complaints, to the filing and oral argument of objections in the Superior Court and the filing of petitions for writs in the Court of Appeal and of petitions for hearing in the California Supreme Court—petitioners have challenged the State's entire inquiry as violative of the First Amendment's Religion Clauses and the Fourth and Fourteenth Amendments, and as tainted by prior First and Fourth Amendment violations. *See, e.g.*, App. 176b-78b, 206b (Religion Clauses); 221b (Fourth Amendment); 223b, 230b (Due Process); 257b, 283b (Religion Clauses); 295b-99b (First and Fourteenth Amendments); 301b-02b (Fourth Amendment); 304b (Fourteenth Amendment).

Repeatedly, petitioners also urged that the discovery orders, especially those directed to petitioner Armstrong and to the Church itself, would "interfere with [the] religious work . . . of the Church" in circumstances where such discovery would not have been demanded of the Pope or of the highest officials of religious organizations favored by or or at least inoffensive to the State. *See, e.g.*, Memorandum in Support of Order Prohibiting or Deferring the Taking Deposition of Defendant Herbert W. Armstrong 5-6. The Attorney General dismissed the analogy: "[T]his is not a case of a pope or head of the Mormon Church or, certainly, not the case of a governmental agency. . . ." App. 241b. *See id.* at 250b-51b.

II.

Entered without explanation in the face of those constitutional objections,[27] the judgments below leave standing a series of interlocking trial court decrees:

(1) which command the Pastor General of the Church—its 87-year-old founder and spiritual and temporal leader—to submit in public to oral interrogation by the Attorney General, and to bring with him virtually every Church-related scrap of paper in his possession, including (a) any writings between himself and the Church, from its inception a half-century ago to the present, "which . . . pertain in any way to any financial transactions, or the use or proposed use of any assets of [the Church]," App. 77b; and (b) "[a]ll diaries, telephone logs or similar writings which evidence appointments, meetings, telephone conversations, or communications by or to [the founder or his closest advisor] from January 1, 1970 to present," *id.*;[28]

(2) which command the Church itself, the College which trains the Church's ministry, and the Foundation through which the Church presents its works to the public,

(a) to answer comprehensive interrogatories revealing, among other things,

[27] *See* App. 1a, 6a, 11a, 15a, 20a, 23a.

[28] Pursuant to the Attorney General's Notice of Taking Depositions and Notice To Produce Documents (January 22, 1979), App. 67b, the Superior Court on March 13, 1979, ordered Armstrong to appear for deposition, App. 2a, deposition appearance order item nine, and on July 19, 1979, granted the Attorney General's motion to compel Armstrong's appearance with the noticed documents. App. 4a. The Attorney General's Notice to Appear and Produce was updated on July 26, 1979. App. 73b. The Court of Appeal on September 18, 1979, denied a petition to set aside the resulting order. 2d Civ. No. 57303, App. 1a. *See also* App. 62b-63b, 239b. Armstrong has refused to appear pending final appellate disposition of his constitutional challenges to the State's inquiry. *See* n.3 *supra*.

(i) the names of all recipients of gifts from each such entity over the past decade, *id.* at 82b;

(ii) the sources and amounts of all loans obtained to help finance the construction of the Foundation's auditorium, *id.* at 84b; and

(iii) the names and addresses of all widows and orphans in California who received aid from a designated Church fund within the last five years, *id.* at 85b; and

(b) to produce for public examination a variety of documents including all minutes of all meetings of the Church's Board of Directors or its committees, on all subjects, from 1957 to the present, *id.* at 90b, and all correspondence between the Church or anyone on its behalf and the Church's first diplomatic representative to the Far East, *id.* at 94b;[29]

(3) which command the closest adviser of the Church's founder and leader, and one close associate of that adviser, to produce for public examination all documents pertaining to any financial, contractual, or other agreements between them and the Church, *id.* at 96b;[30]

[29] Pursuant to the Attorney General's Interrogatories (May 18, 1979), App. 79b, and Requests for Production of Documents (May 18, 1979), App. 90b, *see* n.12 *supra*, the Superior Court on August 8, 1979, ordered the Church, the College, and the Foundation to answer all of the interrogatories "without objection," App. 8a, and on August 31, 1979, ordered the Church, the College and the Foundation to produce all of the designated documents. App. 10a. The Court of Appeal on September 28, 1979, denied a petition to set aside these orders. 2d Civ. No. 57291, App. 6a-7a.

[30] Pursuant to the Attorney General's Request of June 5, 1979, for Production of Documents by Stanley Rader, App. 96b-104b, and Request of June 5, 1979, for Production of Documents by Henry Cornwall, App. 105b, the Superior Court on September 21, 1979, ordered Rader and Cornwall to produce all but a specified few of the designated documents, App. 13a (2d Civ. No. 57640)

(4) which command several former high officials of the Church, including directors of pastoral administration and teachers of theology, *id.* at 113b, to produce for public examination some 105 documents to which they had gained access during their official service and which include personal letters of Church members, internal Church memoranda analyzing the impact of fiscal decisions on Church operations, and other such writings;[31]

(5) which command these former Church officials to produce for *in camera* inspection some 155 documents to which

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and 18a (2d Civ. No. 57290). The Court of Appeal on October 4, 1979, denied petitions to set aside these orders in 2d Civ. No. 57290, App. 15a (Cornwall), and on October 22, 1979, in 2d Civ. No. 57640, App. 11a (Rader).

[31] On May 8, 1979, subpoenas duces tecum were served upon former Church officers Robert L. Kuhn, C. Wayne Cole, and David L. Antion. Upon Kuhn's appearance for deposition, the documents he had brought with him in answer to his subpoena were identified as Church records; these have since been entrusted to counsel for the ex-officers pursuant to an order of the Superior Court issued on May 21, 1979. By motion of May 29, 1979, the State sought to compel production of the documents in question. This motion was expanded to include those documents in the possession of Cole and Antion, which had been entrusted to the same attorney. Through a Memorandum in Opposition dated June 7, 1979, and a Supplemental Memorandum dated August 20, 1979, petitioners objected that document production in compliance with the State's demand would violate their First and Fourteenth Amendment rights. Rejecting those objections, the Superior Court on August 31, 1979, ordered that 105 of the documents be produced for the State's public use in deposing the ex-officers. App. 21a-22a at 22a (first full paragraph). The Court of Appeal denied a petition to set aside this order in 2d Civ. No. 57445 on October 4, 1979. App. 20a. *See* n.3 *supra*. The documents covered by this order include, among many others, a summary of mail received by the Church over a one-week period (item 159), a Church official's phone bills (item 292), a personal letter of a Church member (item 85), an internal Church memorandum analyzing the impact of budget cuts on Church operations (item 42), and an internal memorandum to Church employees regarding their spiritual responsibilities *vis-à-vis* the State under the receivership (item 271). (These item numbers correspond to the list at App. 22a, 113b-45b.)

they had also gained access during their official service, and which include even more confidential materials—such as letters from ministers about their penitential work; rough drafts of private theological tracts; and the unpublished page-proofs of a manuscript entitled "The Doctrine of the Worldwide Church of God";[32] and

(6) which seek both to coerce compliance with all of the above discovery orders without further judicial challenge, and to punish any such challenge, by staying all defensive discovery from the State by any petitioner who persists in contesting the State's power to compel the discovery it seeks—while the State remains free to air in public its allegations of misconduct by such petitioners.[33]

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[32] Item 94, *see* App. 22a, 126b. The procedural history of the order demanding these documents is the same as that of the order described in n.31 *supra*. The documents covered by this aspect of the Superior Court's August 31, 1979, order include, among many others, memoranda and unfinished drafts on purely theological matters exchanged among the several of the highest religious officials of the Church (*e.g.*, items 58, 59, 63, 78, 214); exchanges of views among Church officials about various published works (*e.g.*, items 56, 57); memoranda describing or assigning tasks for the Church's Systematic Theology Project (*e.g.*, items 67, 112, 121, 122, 125); internal communications about Church organizations or about the work of the field ministry in various countries (*e.g.*, items 73, 74, 82, 107, 170, 171, 206, 207, 209, 239); confidential agendas of various committee meetings (*e.g.*, items 142, 145, 146, 148, 149, 150, 151, 156, 160, 162); internal communications about ministerial and biblical studies (*e.g.*, items 95, 124); letters from ministers to Church leaders about their spiritual work (*e.g.*, items 243, 259); an internal preliminary draft of an "institutional self-study report" (item 152) and the final version of the same report (item 153); unpublished page-proofs of "The Doctrine of the World Church of God" (item 94); and a preliminary draft of a Church press release dealing with the understandably sensitive subject of relations between the Church and the Attorney General's Office (item 270).

[33] *See* nn.4 & 13 *supra*. Over petitioners' objection that they were *all* being penalized unfairly for the entirely lawful pursuit of appellate remedies by petitioner Stanley Rader, App. 246b-47b, 271b-78b, the Superior Court on August 8, 1979, ordered that all discovery of information in the State's possession be stayed until

III.

This comprehensive probe into Church decisions, deliberations, and documents has been sustained below not to assist in the judicial resolution of any intra-church dispute over rightful ownership or control of church property. No such dispute is involved here,[34] and the trial court has expressly ruled that the wishes of the Church's 70,000 members are "immaterial." *Id.* at 205b. Nor has this probe been sustained as a means of preventing or redressing any injury to public health, safety, or well-being

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at least September 21, 1979, App. 24a-25a, 281b-82b, in light of petitioner Rader's persistent challenge to being deposed and in light of the Superior Court's certitude that all petitioners (defendants in the proceedings below) would resist that court's discovery orders on what the court regarded as misguided First Amendment grounds. App. 278b-81b. On September 21, 1979, the Attorney General urged the continued use of judicial pressure not only to induce petitioner Rader to make discovery, but also to induce all *other* petitioners to do so, *id.* at 304b-05b, characterizing petitioners' requests for writs to quash the Superior Court's discovery order as "a concerted and combined effort to avoid discovery." *Id.* at 305b. Accordingly, on September 21, 1979, the Superior Court stayed all discovery by defendants until at least November 26, 1979, App. 26a, and ruled that "any defendant who makes discovery here would be in a position to ask the court to reconsider the [stay] order as it might relate to him." *Id.* at 307b. This stay has been routinely extended in light of petitioners' continuing challenge to the State's discovery. *See, e.g.,* App. 28a-29a (December 18, 1979). On October 4, 1979, the Court of Appeal denied a petition to set aside this rolling stay. 2d Civ. No. 57294. App. 23a.

[34] Although the State's complaint was initially filed at the instigation, and on the relation of, six disaffected members of the Church, *see* nn.8 & 23 *supra,* their involvement reflected at most that "corrupting coalition or alliance" between church members and the state which history had taught Madison to fear. J. Madison, IX *Writings* 487 (G. Hunt ed. 1910). This case does not involve a specific contest between contending factions both of which seek to use or control the same church property, with one such faction seeking judicial assistance to protect its claimed right from the other. As the Attorney General put it: "In this case there isn't any adversary proceeding between party A and party B." App. 201b. "The suit," he explained, "clearly is one to enforce public rights. . . ." *Id.* at 202b. *See id.* at 146b-47b. *See also* pp. 38-39 *infra.*

said to have been caused or threatened by the Church or by its members. The trial court itself stressed that the Church "has not been accused of any wrongdoing," *id.* at 212b, and the Church does not even solicit contributions from the general public.[35]

Nor, finally, has the probe in this case been upheld as a necessary means of pursuing probable misappropriation or other misconduct by individual Church officers. Although the State has alleged possible wrongdoing by several Church officers in the most colorful terms,[36] all of its charges either draw in question conduct constitutionally immune to the State's examination and control[37] or rest entirely on uncorroborated hearsay described generously as "information and belief." [38] Indeed, the State has steadfastly disclaimed any duty to establish even probable cause to believe that actual wrongdoing has occurred.[39] And the Superior Court, satisfied to entrust the fundamental rights here at risk to the Attorney General's "good faith" self-restraint in conducting virtually open-ended discovery against the Church, *id.* at 219b, chose not to "make any

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[35] The State has never attempted to show otherwise, and has acknowledged that the "givers" of money to the Church "are the people all across the country who send in their tithes and their double tithes and their offerings." App. 180b.

[36] *See* n.23 *supra.* Like the State's Complaint, filed January 2, 1979, the State's Second Amended Complaint, filed July 30, 1979, adverts to the "siphoning off and diverting" of Church assets and properties by Church officers "on a massive scale," App. 17b, and to the "pilfering and misappropriation" of such assets and properties by Church officers "on a massive scale." *Id.* at 26b.

[37] *See* pp. 36-41 *infra.*

[38] *See, e.g.,* Complaint, App. 26a-27a; Second Amended Complaint, *id.* at 15b, 17b, 19b, 20b, 22b, 26b, 27b, 30b. And the State peppered its information-and-belief accusations against the Church with requests for leave to amend even the Second Amended Complaint with more substantial allegations if and when its probe of the Church yields actual evidence of wrongdoing. *E.g., id.* at 16b, 20b.

[39] *See* App. 179b, 182b, 209b-210b, 214b, 218b, 279b, 286b.

effort . . . to try to delineate what [the agents of the State] may look at and what they can't," *id.* at 218b, ordering panoramic discovery without having formed any "belief that somebody has done something wrong here." *Id.* at 279b. Consistent with this approach, at no point did the State allege or the Superior Court find that either (a) criminally investigating and prosecuting identified individuals, or (b) enjoining specific transactions, or (c) permitting derivative suits by individual Church members, would prove insufficient to prevent or redress the harms feared. *See id.* at 289b.[40]

As the sole justification for proceeding to investigate, and for investigating so broadly and intrusively, in the absence of any factual showing that misconduct may have occurred, the Attorney General advanced below, and the Superior Court accepted, the theory that, because "the [Church's] property [is] truly owned . . . by . . . the people of California," *id.* at 154b, "there are no private rights here," *id.* at 180, and "the usual [constitutional] principles are not applicable" in this case. *Id.* at 158b. Like any other charitable organization in the State, therefore, the Church holds all of its property, assets, books, and records as a mere trustee for the people of California, who are the true beneficiaries of all such assets and documents, *see id.* at 162b, 201b—even where, as here, no trust instrument so declares, and few of the contributing members live in California. *See* n.1 *supra.* Thus the Superior Court explained that simply to assert that records bearing on financial matters might be constitutionally protected is itself proof of bad faith.[41] And according to the Attorney General, the very fact of resisting comprehensive public inquiry establishes unfitness to serve as a trustee of Church assets.[42]

[40] *See, e.g.,* California Corporations Code §§ 9142, 9511-9514.

[41] *See* App. 213b, 216b. *See* n.47 *infra.*

[42] *See* Second Amended Complaint ¶¶18, 20, 22, App. 21b-22b.

Because the Superior Court considered that "this is not a First Amendment situation," [43] it saw no need to impose upon the State any burden to justify laying bare the Church in the course of a lawsuit undertaken thoroughly to expose the Church's inner workings,[44] fundamentally to restructure its form of governance,[45] and permanently to remove various of its officers.[46] *See* pp. 6, 18-21 *supra* and 40-41 *infra.*

Reasons for Granting the Writ

Both the investigation sanctioned by the judgments below, and the claims of state authority upon which that investigation rests, dramatically abridge the rights of petitioners under the Free Exercise, Search and Seizure, and Due Process Clauses, and are irreconcilable with the Establishment Clause. Under the Fourteenth Amendment, the orders challenged below should thus have been set aside. If allowed to stand, those orders in themselves will irreparably compromise the constitutional claims advanced herein—and will seriously erode the constitutional protections of all citizens.

[43] App. 279b.

[44] *See* Complaint ¶8, App. 3b; ¶21, *id.* at 8b; Prayers 1 & 3, *id.* at 9b; Second Amended Complaint ¶11, *id.* at 176; ¶18, *id.* at 21b; ¶25, *id.* at 25b; Prayer 1, *id.* at 32b; Prayer 4, *id.* at 33b.

[45] *See* Complaint ¶¶12-13, App. 5b; Second Amended Complaint ¶¶24-25, *id.* 23b-25b.

[46] *See* Complaint, Prayer 2, App. 9b; Second Amended Complaint, Prayer 2, App. 33b.

I.

The Discovery Orders Upheld Below Conflict Squarely With the Security of Personal Papers and Effects From Unreasonable Search and Seizure; With Associational Privacy; With the Free Exercise of Religion; and With the Separation of Church and State.

The breadth and intrusiveness of the investigatory orders upheld by the court below need little further elaboration. *See* pp. 18-21 *supra.* Any and all internal Church deliberations and documents, however confidential, that could conceivably bear on the Church's collections or disbursements of funds, its allocations of resources, or its contractual and employment relationships—that is, all things remotely bearing on the existence of the Church as more than a loose community of shared beliefs—are automatically deemed unprotected from the Attorney General's gaze,[47] notwithstanding this Court's frequent reminders that raising and spending money are often inseparable aspects of First Amendment activity. *See, e.g., Village of Schaumburg* v. *Citizens for a Better Environment,* 48 U.S. L.W. 4162, 4165 (1980) (advocacy); *Buckley* v. *Valeo,* 424 U.S. 1, 16 (1976) (per curiam) (speech); *Murdock* v. *Pennsylvania,* 319 U.S. 105, 115 (1943) (religion).

Only nominally an investigation of financial misconduct, the State's inquiry seeks to spread upon the public record

[47] Warning counsel for petitioners that it would regard as "evidence of bad faith" any "arguments that the financial records [sought from the Church by the State] involve ecclesiastical matters," the Superior Court on February 21, 1979 stated:

> I just don't think ecclesiastical matters have anything to do with the financial aspects of the operation out there.
>
> I can see a clear delineation between what is ecclesiastical and what is not, but it has no reference whatsoever to financial matters. . . . I want that to be very, very clear.

App. 216b. *See* pp. 40-41 & n.66 *infra.*

literally decades of minutes and diaries, letters and preliminary drafts, notes and memoranda—covering virtually all facets of Church life.[48] Beyond that, purely theological correspondence and unfinished religious tracts are to be submitted for *in camera* inspection by the State's judicial authorities.[49] Nor is the investigation to be limited to examination of documentary material: even the venerated founder and spiritual leader of the Church himself has been ordered to appear for public interrogation about his stewardship of the Church.[50] Constituting the core of this investigation, the discovery orders upheld below suffer from three sets of constitutional infirmities.

A. *The Challenged Examination and Review of Church Records by Civil Authorities Constitutes Forbidden Entanglement.*

The State's sweeping investigation and evaluation of Church records and decisions are the very paradigm of forbidden entanglement between civil and ecclesiastical authority. Repeatedly, this Court has acted to avoid investigatory entanglements between church and state distinctly less pervasive and intrusive than that sanctioned by the court below. *See, e.g., NLRB* v. *Catholic Bishop of Chicago,* 440 U.S. 490, 501-04 (1979); *Serbian Eastern Orthodox Diocese* v. *Milivojevich,* 426 U.S. 696, 708-12 (1976); *Presbyterian Church* v. *Hull Church,* 393 U.S. 440, 449 (1969).[51]

[48] *See* pp. 18-21 *supra.*

[49] *See* pp. 20-21 & n.32 *supra.*

[50] *See* p. 18, *supra.*

[51] *See also Surinach* v. *Pesquera de Busquets,* 604 F.2d 73, 78 (1st Cir. 1979) (consumer affairs agency cannot inspect financial documents of parochial schools as part of investigation into causes and cures of inflation); *Fernandez* v. *Limmer,* 465 F. Supp. 493, 505 (N.D. Tex. 1979) (provision authorizing government examination of financial records of charities to ascertain whether their collection cost is too high to justify issuance of permit to solicit contributions at local airport *held* void as applied to religious organizations).

Indeed, government aid otherwise forbidden to religon has at times been tolerated precisely because the alternative would have entailed "state investigation into church operations and finances." *Walz* v. *Tax Commission,* 397 U.S. 664, 691 (1970) (Brennan, J., concurring). And even if the Church or any of its related entities actually *welcomed* "government's . . . power to inspect and evaluate [its] financial records and to determine which expenditures are religious and which are secular," *Lemon* v. *Kurtzman,* 403 U.S. 602, 621-22 (1971), programs inviting the exercise of such power have squarely been held impermissible under the First and Fourteenth Amendments. *Id. See Wolman* v. *Walter,* 433 U.S. 229, 252-55 (1977).

B. *The Public and Coercive Character of This Investigation Infringes Petitioners' First Amendment Rights of Associational and Religious Privacy.*

The investigation sanctioned by the court below goes far beyond a forbidden entanglement, however. This investigation is, in addition, both *coercive* and *public* in character,[52] flouting this Court's solemn warning "that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley, supra,* 424 U.S. at 64.[53] Especially "when those forced revelations concern matters that are unortho-

[52] *See* App. 62b-63b, 293b. To be sure, some of the materials demanded might be protected from public exposure through *in camera* screening. *See* pp. 20-21 & n.32 *supra.* But this Court has ruled that not even the promised secrecy of grand jury investigation can save an inquiry " 'far too sweeping in its terms to be regarded as reasonable' under the Fourth Amendment. *Hale* v. *Henkel,* 201 U.S. 43, 76 (1906)." *United States* v. *Calandra,* 414 U.S. 338, 346 (1974) (grand jury subpoena duces tecum, despite secrecy, must be disallowed if too sweeping) (dictum).

[53] *See, e.g., Gibson* v. *Florida Investigating Committee,* 372 U.S. 539 (1963); *Shelton* v. *Tucker,* 364 U.S. 479 (1960); *NAACP* v. *Alabama ex rel. Patterson,* 357 U.S. 449 (1958); *Sweezy* v. *New Hampshire,* 354 U.S. 234, 245 (1957) (Warren, C.J., announcing judgment).

dox, unpopular, or even hateful to the general public, the reaction in the life of the witness"—and of the religious organization the witness leads—"may be disastrous." *Watkins* v. *United States,* 354 U.S. 178, 197 (1957). The image of the aging patriarch of the Church being interrogated by the Attorney General dramatizes this Court's teaching that "[t]he mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference." *Id.*

More generally, the tendency of "[b]road and sweeping state inquiries," *Baird* v. *State Bar,* 401 U.S. 1, 6 (1971) (Black, J., announcing judgment), to "discourage citizens from exercising rights protected by the Constitution," *id.,* can be blocked only if "the power of compulsory process [is] carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech." *Sweezy* v. *New Hampshire,* 354 U.S. 234, 245 (1957) (Warren, C.J., announcing judgment). Yet the record in this case reveals anything *but* a "carefully circumscribed" inquiry.

C. *The Orders Upheld Below Lack the Factual Basis and Narrow Scope Required by the First and Fourth Amendments.*

The inquiry here is essentially a fishing expedition. Its unfocused design is "to investigate allegations of misuse [of assets] or even suspicions of misuse," App. 172b, impermissibly compelling wide-ranging disclosure upon "the mere suspicion that [some of] the information sought may constitute or lead to evidence that some of the people concerned, or others, have violated State . . . laws." *Pollard* v. *Roberts,* 283 F. Supp. 248, 257-58 (E.D. Ark.) (three-judge court), *aff'd mem.,* 393 U.S. 14 (1968) (per curiam) (enjoining compelled disclosure, without probable cause, of a political party's financial records in an attempt to uncover election frauds). *Cf. Speiser* v. *Randall,* 357 U.S.

513, 526 (1958). *See* n.52 *supra*. On the very day it ordered the Church, the College, and the Foundation to answer comprehensive interrogatories, the Superior Court, satisfied with mere "notice that there might conceivably be some problems," *id.* at 185b—"enough to raise an eyebrow. . . ." *id.* at 212b—candidly stated that it had formed "no belief that somebody has done something wrong here." *Id.* at 279b. It simply wanted to find out.

Even if probable cause could somehow be made out on this record, no investigation as sweeping and intrusive as this could constitutionally rest upon as weak a foundation as that presented here. For when the Attorney General's "investigative process tends to impinge upon such highly sensitive areas as [First Amendment] freedom[s]," *Sweezy, supra,* 354 U.S. at 245, not even a requirement of "probable cause for conducting a particular investigation . . . is . . . likely . . . [to] prove an adequate safeguard against unwarranted inquiries," unless "the record . . . reveal[s] what reasonable or reliable information led the Attorney General to question petitioner," *id.* at 252, and unless the "existence and weight [of such information] were . . . independently reviewed by the state courts." *Id.* at 252 & n.13.

The inquiry in this case has been sanctioned in utter disregard not only of these settled criteria of cause, but also of less drastic, and less entangling, alternatives for achieving the State's legitimate aims—whether through civil suit brought by individual Church members alleging a misappropriation of funds contributed by them, or through criminal prosecution of allegedly guilty individuals. *Cantwell* v. *Connecticut,* 310 U.S. 296, 306-07 (1940); *Schneider* v. *Irvington,* 308 U.S. 147, 164 (1939); *International Society for Krishna Consciousness* v. *Bowen,* 600 F.2d 667, 669-70 (7th Cir. 1979). *Cf. Village of Schaumburg, supra,* 48 U.S.L.W. at 4166. *See* p. 24 & n.40 *supra*. Even if probable cause—or more—were conceded as to individual Church officers, therefore, there would be no justification

for methodically ransacking the records of—and ultimately dismembering—the entire Church. The First and Fourteenth Amendments forbid any such gratuitous state invasion of protected privacy and liberty—even, and perhaps especially, in the name of "protecting" a church from its own leaders. *See Shelton* v. *Tucker,* 364 U.S. 479, 487-90 (1960); *Sherbert* v. *Verner,* 374 U.S. 398, 407 (1963); *Surinach* v. *Pesquera de Busquets,* 604 F.2d 73, 79 (1st Cir. 1979). *Cf. Olmstead, supra,* 277 U.S. at 479 (Brandeis, J., dissenting).

The court below, forgoing both a probable-cause requirement and a less-drastic-alternative requirement, was content to "rely on the Attorney General's good faith," App. 219b—on his "good judgment and discretion," *id.*—rather than "try[ing] to delineate what [the Attorney General] may look at and what [he] can't." *Id.* at 218b. But "simply [to] assume . . . that every . . . investigation is justified by a public need that overbalances any private rights affected . . . would be to abdicate the responsibility placed by the Constitution upon the judiciary to insure that [government] does not unjustifiably encroach upon [the] right to privacy nor abridge . . . liberty of speech, press, religion, or assembly." *Watkins, supra,* 354 U.S. at 198-99. Abdicating that responsibility and inviting altogether discretionary and uncontrollably discriminatory state investigation, the judgments below would set a pernicious precedent indeed if allowed to stand.

II.

The Claims of State Authority Underlying These Discovery Orders, and the State's Conduct of the Lawsuit in Which the Orders Were Entered, Are Starkly Incompatible With Rights of Private Property and Religious Autonomy.

The judgments below must be set aside not only because of the invalidity of the discovery they decree, but also because of the constitutional flaws in the claims of state authority that those judgments expose and exploit.

A. *The State's Claimed Source of Authority Is Unconstitutional.*

The State's central claim, repeated at every crucial juncture, has been that it is simply enforcing the rights of "the People of the State of California, as the beneficiaries of charities," [54] to examine what are, after all, "public records [and] public assets." App. 162b. Since Church "property [is] truly owned . . . by . . . the people of California," *id.* at 154b, the Church and its officers obviously have "no privileges, constitutional or otherwise . . . against investigation by the Attorney General." *Id.* at 170b-71b. It follows, as the Superior Court succinctly put it, that the wishes of the Church's 70,000 members are simply "immaterial." *Id.* at 205b. So too are the wishes and beliefs of the Church's leaders—for they are but trustees, and the "court may remove and replace and substitute trustees at its pleasure." *Id.* at 172b.[55]

[54] State's Opposition to Defendants' Demurrers to Second Amended Complaint 8-9, *People* v. *Worldwide Church of God, Inc.*, Super. Ct. No. C 267607 (September 14, 1979). "The Church, the College and the Foundation, as well as the individual named defendants . . . hold and are responsible for the assets of the three charitable entities, as trustees, subject to supervision by the Attorney General and ultimately by this court. The ultimate beneficiary in each instance is the public which benefits generally from all charitable endeavors." Second Amended Complaint ¶10, App. 16b-17b. *See also* Complaint ¶3, App. 1b-2b.

This remarkable assertion of state authority is said to derive simply from the Church's charitable character—not from any specific trust instrument, or even from any supposed acceptance of intrusive state supervision by virtue of the Church's decision to incorporate in California. For the State insists—no doubt to avoid the gravest of equal protection and establishment clause challenges[56]—that "the Attorney General could take the same enforcement action as it is taking in the instant case with regard to an unincorporated church." [57] All genuine churches in the State are thus subject to precisely the same fate as the Worldwide Church of God: no matter where its officers and the overwhelming majority of its members may live, *see* n.1 *supra,* and no matter how fervently its members may wish to put their faith in the discretion of the church's hierarchy, any church that enters California physically (or perhaps even intangibly) holds all of "its" assets—buildings, books, sacraments, donations, pews—in trust for the people of the State. And, with or without the trust label, any such church must stand ready to reveal all, both through "periodic accountings" [58] and through accountings to be conducted under the Attorney General's lash whenever an "eyebrow" is raised. App. 212b.

[55] In the Second Amended Complaint ¶22, the State asks "that each of the defendants Rader, Gotoh, Kuhn, Wright, Cornwall and Helge should be perpetually enjoined and restrained from serving as officers or directors, or any other capacity, with respect to the Church, College or Foundation or any other California charitable or trust organization." App. 22b.

[56] The State obviously could not limit the advantages of normal incorporation to churches willing to waive rights of privacy and free exercise. Nor could the willingness of a church to accept pervasive state entanglement in return for the benefits of incorporation defeat an Establishment Clause challenge.

[57] *See* n.22 *supra.*

[58] Second Amended Complaint ¶25, App. 25b.

Nor can the State maintain the investigation challenged in this petition while belatedly disclaiming any such "arrogant pretension." [59] For governmental coercion to obtain information may never be justified as an end in itself; such coercion may be upheld only "as an adjunct" to some otherwise legitimate governmental process. *Watkins, supra,* 354 U.S. at 197.[60] And the *only* governmental process to which the discovery orders below were even arguably "adjunct" was one predicated entirely upon the theory set forth above—a theory without which the Superior Court might well have imposed upon the State a burden of justification it could not have met.[61] As the Attorney General's deputy conceded below, "the burden to prove . . . that there has been misconduct . . . is not [one] we ever undertook in filing this lawsuit or [one] that I think that we can carry." App. 212b-2.

Thus the Attorney General's bold assertion of *parens patriae* authority to inspect the innermost recesses of all churches—and, for that matter, of all private schools, colleges, foundations, and other non-profit entities, *id.* at 170b[62]—both periodically as a routine matter, and with special intensity whenever the foes of the Church catch the ear of the State—is squarely presented for review in this case, quite apart from the precise scope of the discovery orders themselves. And once an exercise of governmental power is unmistakably bottomed on such an

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[59] J. Madison, "Memorial and Remonstrance Against Religious Assessments," *in* II *Writings* 187 (G. Hunt ed. 1910).

[60] *Cf. Brown* v. *Texas,* 99 S.Ct. 2637, 2641 (1979) (a person unlawfully detained cannot be penalized for refusing to state his name).

[61] *See* App. 179b, 182b, 209b-10b, 214b, 218b, 279b, 286b.

[62] "The Attorney General of the State of California; and his deputies, have not only the power, but the duty, at any time to investigate all the books and records, 100 percent of the books and records of any charitable, religious or educational organization." App. 170b.

assertion of authority, it matters not whether "there is any legislative purpose which *might* have been furthered by the kind of disclosure sought," *Watkins, supra,* 354 U.S. at 204 (emphasis added), for whatever "indulgence of legality" is due the State, "such deference cannot yield to an unnecessary and unreasonable dissipation of precious constitutional freedoms." *Id.*

It is difficult to imagine a more profligate dissipation of those freedoms than that which the judgments below represent. For the State's claim of authority in this case is comprehensible *only* on the State's own explicit premise that a charitable organization such as "the Worldwide Church of God, derives its position, its existence, from the State of California." App. 170b.[63] Having recently rejected a strikingly similar premise as to business corporations, *First National Bank* v. *Bellotti,* 435 U.S. 765, 778 n. 14 (1978), this Court should now repudiate that premise as to churches and other charitable entities. To do otherwise would be to sanction a naked confiscation of private property without just compensation, *cf. Kaiser Aetna* v. *United States,* 100 S.Ct. 383, 392-93 (1979), in a context reminiscent of that in which this Court first drew the basic and enduring constitutional distinction between private and public corporate entities. *See Terrett* v. *Taylor,* 13 U.S. (9 Cranch) 43, 51-52 (1815) (Story, J.) (state cannot constitutionally dedicate church property to the poor of the parish). *Cf. United States* v. *564.54 Acres of Land,* 441 U.S. 506, 515-16 (1979) ("As a private entity, respon-

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[63] This may indeed be one of those cases in which the State's "rationale is [even] more disturbing than its [actions]." *Meachum* v. *Fano,* 427 U.S. 215, 229 (1976) (Stevens, J., joined by Brennan and Marshall, JJ., dissenting). For one should not have to recall too often "that all men were endowed by their Creator with liberty as one of the cardinal unalienable rights." *Id.* at 230. To trace all rights of the Worldwide Church of God—and thus of the worshippers it represents—to the State whence it "derives . . . its existence," App. 170b, surely "demeans the concept of liberty itself." *Meachum, supra,* 427 U.S. at 233 (dissenting opinion).

dent [church] is free to allocate its resources to serve its own institutional objectives, which may or may not correspond with community needs. . . . Respondent did not hold its property as the public's trustee and thus is not entitled to be indemnified for the public's loss.").

B. *The State's Avowed Purposes in Exercising This Authority Are Unconstitutional.*

Just as an investigation can be undertaken only under a constitutional claim of authority, so an investigation can be undertaken only for a constitutional purpose—to gather information that the State intends to put to some permissible use. *See, e.g., Surinach, supra,* 604 F.2d at 75.

1. The Judgments Below Aim Impermissibly at Supervising Spending Choices by Church Officials.

This suit and the discovery therein seek to assure that all funds donated to the Church are used "strictly for God's Work," [64] with agents of the State ultimately deciding whether devoting substantial resources to presenting representatives of "the church . . . in as beautiful and wonderful [a] fashion [as possible] to the rest of the world," App. 280b, should be viewed as acceptable investments in the Church's appeal to others or as unacceptable instances of self-dealing and diversion of Church assets to personal use.

From the earliest stages of this suit[65] to the most recent,[66] the State's accusations of fraud and misspending have all

[64] Second Amended Complaint ¶12(c), App. 18b.

[65] On January 12, 1979, the Superior Court expressed concern about the "astonishing amount of money expended here . . . for . . . travel expense, the purchase of extensive gifts and so forth." App. 183b-84b. "[S]ome expenditures along that line," *id.*, the court opined, "are completely proper and permissible." *Id.*

[66] On August 8, 1979, the Superior Court explained that it "divide[s] this in my mind in sections, and one section has to do with the operation of the church. It has to do with church doctrine. If the doctrine of the Worldwide Church of God is consistent with Mr. Helge's representations that people are to live well and that . . . the church is to be presented in as beautiful and wonderful fashion to the rest of the world as an example of how God fearing and God believing people should live, fine. . . . That does not mean that people can't be asked questions about money which are to this Court a very different matter." App. 280b. *See id.* at 216b. *See also* n.47 *supra.*

rested upon the constitutionally untenable assumption that civil authorities can draw the line between permissible and impermissible levels of generosity by the leader of the Church in dealing with his closest aides, and between permissible and impermissible levels of luxury and material display by Church representatives who serve as its emissaries in worldwide missions. That is a line a secular state is forbidden to draw. See *Serbian Eastern Orthodcx Diocese, supra,* 426 U.S. at 711-17; *Surinach, supra,* 604 F.2d at 77.

2. The Judgments Below Aim Impermissibly at Superimposing External Standards on Internal Church Relationships.

This suit and the discovery therein also seek to impose the State's conceptions of fair dealing, conflict of interest, and the like upon relationships and transactions wholly internal to the Church—insisting, for example, that the religious leader of the Church must seek and obtain "independent legal advice," [67] when concluding long-term agreements with his closest spiritual adviser, lest the latter be deemed guilty of "self-dealing" in breach of his duties as a trustee.[68] But to make such demands is to impose upon the inner life of the Church a vision of arm's-length bargaining that may be wholly alien to intra-church relationships. *Cf. Serbian Eastern Orthodox Diocese, supra,* 426 U.S. at 708-20;

[67] State's Response to Petition For Hearing in California Supreme Court 4, 2d Civ. No. 57640.

[68] *See* Second Amended Complaint ¶21, App. 22b.

NLRB, supra, 440 U.S. at 502-04. That a body of law may constitutionally be imposed upon the dealings of a church with those outside does not imply that it may similarly be imposed on internal church dealings and relationships, *cf. Wisconsin* v. *Yoder,* 406 U.S. 205 (1972)—any more than a state may extend to the internal operations of a political party the state's rules for organizational structure and behavior. *Cousins* v. *Wigoda,* 419 U.S. 477, 489-91 (1975).

In claiming that it may examine and supervise petitioners' conduct on the basis of neutral state rules of fiduciary duty and corporate governance, the State misapplies this Court's recent holding in *Jones* v. *Wolf,* 99 S. Ct. 3020 (1979), that in resolving an intra-church dispute a court may employ "objective, well-established . . . neutral principles of law" as the basis of decision, *id.* at 3025, if the court can thereby avoid making any judgments on questions of religious doctrine or organization. For unlike the controversy before this Court in *Jones,* the instant suit involves no dispute over the ownership or control of property between adversary factions within a church; no "legitimate [state] interest," *id.,* in preventing private resolution of any such controversy "by brute force," *Serbian Eastern Orthodox Diocese, supra,* 426 U.S. at 726 (Rehnquist, J., dissenting), could justify in this case even the limited intervention upheld in *Jones.* This case thus stands in sharp contrast to one in which a state's interest in preventing oppression and civil disorder may be sufficient even to offset some risk "of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern." *Presbyterian Church, supra,* 393 U.S. at 449.

The Church's only adversary in this proceeding is the State. The Attorney General, in fact, has frankly admitted that no intra-church dispute is involved in the present action: "In this case there isn't any adversary

proceeding between party A and party B." App. 201b. The State has insisted that "here there are no both sides." *id.* at 147b, characterizing the suit as "clearly . . . one to enforce public rights." *Id.* at 202b. Hence the State's pretension to the role of neutral arbiter, *e.g.,* App. 146b-47b, is belied by the absence of any internal dispute to arbitrate.

More generally, the "neutral principles approach" is commended in large measure by its deference, whenever possible, to the intentions of Church members when determining the norms to be used in resolving their controversies. Thus in upholding the use of that approach in *Jones,* this Court stressed its tendency to "ensure that a dispute over the ownership of church property will be resolved in accord with the desire of the members." 99 S.Ct. at 3025-26. But in the instant case, California's courts have baldly rejected this principle. Dismissing as "immaterial" the wishes of the Church's 70,000 members, App. 205b, who have never been alleged to disapprove of the customary manner in which the Church is governed and administered, the Superior Court unhesitatingly accepted the Attorney General's invitation to evaluate and regulate the conduct of Church officers and administrators on the basis of the fiduciary strictures preferred by officers of the State to those prevailing within the Church. Such contempt for "the intentions of the parties" violates the spirit of the "neutral principles" analysis and should not be given constitutional sanction.

Finally, the specific rules the State seeks to apply in this action themselves violate the premise of the "neutral principles" approach—that the rules of decision must be theologically unbiased, entailing no judgment on questions of religious doctrine or ecclesiastical organization. The interpretation and application of the legal norms pertaining to fiduciary duties involves subtle ethical judgments as to what precisely the "duty of the finest loyalty" should entail, and what the punctilios "of an honor the most sensitive" must be. *Meinhard* v. *Salmon,* 249 N.Y. 458, 463-64,

164 N.E. 545, 546 (1928). The meditations of a court on such issues are inevitably shaped by a variety of religious conditioned attitudes and biases—about modesty and assertiveness, altruism and self-concern, generosity and prudence, trust and caution. The prevailing views on such issues, as embodied in the common or statutory law of fiduciary relations or charitable associations, may seem misguided or even nonsensical to people of different religious persuasions. When a legislative command or a judicial decree employs such standards in evaluating and regulating the interactions of the officers of a religious organization, the state inevitably becomes involved in settling theological questions. Thus forced to make religiously biased judgments, the State oversteps the barriers established by the First and Fourteenth Amendments.

3. The Judgments Below Aim Impermissibly at Altering Church Polity and Leadership.

This suit and the discovery therein finally seek, as judicial relief, the removal of designated Church officers and their permanent exclusion from "any other California charitable trust or organization";[69] the replacement of a hierarchical Church polity under the Pastor General with a congregational structure in which members vote on "matters of importance";[70] and the restructuring of the Church into one whose "financial affairs" are separated "from its ecclesiastical or spiritual affairs," with the former being supervised by a board rather than by an individual leader. App. 24b-25b.

This entire program founders on the patent impossibility of achieving its hypothesized separation of ecclesiastical and financial church concerns—its animating postulate. In which compartment would one put a choice between purchasing 10,000 more prayer books and training 10 more

[69] *Id.* ¶22, App. 22b; *see also id.*, Prayer 2, App. 33b.

[70] *Id.* ¶25(a), App. 24b-25b.

ministers? No Solomon could perform the surgery the State demands. *Cf. Committee for Public Education & Religious Liberty* v. *Regan,* 48 U.S.L.W. 4168, 4177 & n.5 (1980).

Just as the Superior Court's proposed division between discovery of financial matters and discovery of ecclesiastical matters, App. 216b, is constitutionally indefensible, *see* pp. 27-28, 36-37 *supra,* so the Attorney General's proposed relief is a constitutional chimera. The State's prayers for relief—if they are to mean anything at all—must be understood as claiming nothing less than a power to redesign the governance and replace the leadership of the entire Church as a religious entity—and that, without any adjudication that the Church or its leaders have broken any valid law or wronged any individual. Such a claim of power flagrantly violates "the free exercise of an ecclesiastical right, the Church's choice of its hierarchy." *Kedroff* v. *St. Nicholas Cathedral,* 344 U.S. 94, 119 (1952); *Serbian Eastern Orthodox Diocese, supra,* 426 U.S. at 721-22.

C. *The State's Conduct of the Underlying Lawsuit Taints the Judgments Below.*

The discovery orders upheld below are tainted not only by the theory on which they depend and the purposes they are designed to serve, but also by the path the State has followed in obtaining them.

Acting without notice, without any discernible basis in fact, without any prior adversary hearing, and without any warrant specifying the places to be searched or the items to be seized, agents of the State flagrantly violated the federal constitutional rights of the Church by raiding its premises and carting away its records and documents from the morning of January 3, 1979, until the lifting of the receivership *pendente lite* on March 16, 1979. *See* pp. 4, 13 and n.23 *supra.* On the record here, this literal seizure of the Church and thousands of its papers deprived

it of liberty and property without the semblance of procedural due process, *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, 419 U.S. 601 (1975), and flagrantly invaded its First, Fourth, and Fourteenth Amendment rights.[71]

By the time an adversary hearing was held from January 10, 1979, App. 172b, to January 12, 1979, App. 174b, on the confirmation of the receivership under which the Church was being held, counsel for petitioners pointed out—to no avail—that the initial raid of the Church and its records had already given "the Attorney General . . . a head start, a power, not a right, that may turn to the great disadvantage of the defendants in this case." [72] Nor did the Attorney General conceal his intention to employ that "head start" to shape the civil discovery through which he would pursue the receivership's objectives once Church members had posted the bond set by the Superior Court to lift that receivership pending appeal: just as the receivership order had itself provided that all materials seized thereunder were to be "made available . . . to the representatives of the plaintiffs for use in preparing for the trial," App. 188b-89b, 232b-33b, so the Attorney General stated that all "future legal actions" of his office would be "determined" by "reviewing information obtained by the court-appointed receivers." *Id.* at 64b-66b. *See* n.10 *supra.*

Petitioners unsuccessfully urged the Superior Court to rule that "any questions leading from those stolen documents are subject to being suppressed," *id.* at 273b, *see Wong Sun* v. *United States*, 371 U.S. 471 (1963); *Nardone* v. *United States*, 308 U.S. 338 (1939), and unsuccessfully maintained in the Court of Appeal that the initial illegality "has tainted the entire action from its inception." [73] To disregard the poisoned roots of the State's current probes into the Church—where the documents on which the State seeks to build those probes would otherwise have been unavailable, *cf. United States* v. *Ceccolini*, 435 U.S. 268, 276 (1978); where each further public use of the information originally seized constitutes "a fresh and independent violation of [First Amendment] rights," *cf. United States* v. *Calandra*, 414 U.S. 338, 353 (1974); and where the State, despite the civil form of the action it is pursuing, accuses Church officers of criminal conduct, *cf. United States* v. *Janis*, 428 U.S. 433, 446, 456-58 (1976)—is to invite an identical attack by the State upon any religious organization it may wish to slander or lay bare.

It follows that the claims of authority underlying, justifying, and leading to the discovery orders upheld below cannot be squared with rights of private association and property or of religious liberty and autonomy. Those rights are uniquely dependent upon secure expectations; they cannot long survive such visible defeats as that inflicted below.

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[71] *See LoJi Sales, Inc.* v. *New York*, 99 S.Ct. 2319, 2324-25 1979); *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 312-13 (1978); *Andresen* v. *Maryland*, 427 U.S. 463, 480 (1976); *United States* v. *United States District Court*, 407 U.S. 297, 313-14 (1972); *Coolidge* v. *New Hampshire*, 403 U.S. 443, 450, 467 (1971); *Carroll* v. *President & Commissioners of Princess Anne*, 393 U.S. 175, 180 (1968); *Stanford* v. *Texas*, 379 U.S. 476, 481-85 (1965); *Aguilar* v. *Texas*, 378 U.S. 108, 110-14 (1964); *Boyd* v. *United States*, 116 U.S. 616, 624-28 (1886).

[72] Reporter's Transcript for January 10, 1979, at p. 76.

[73] Exhibit H to Petition For Writ of Mandate And/Or Prohibition 3, 50-53, 2d Civ. No. 57303.

III.

The Trial Court's Punitive and Coercive Treatment of Each Defendant Who Challenges the Validity of the State's Discovery in Any Appellate Court Violates Due Process and Federal Supremacy.

The discovery orders upheld below, although not yet supplemented by direct decrees of fine or incarceration, have, in a sense, already been enforced. For they have been backed up by a series of decrees staying all discovery from the State—however vital such discovery may be to petitioners' efforts to learn of the charges against them and to defend their reputations—so long as petitioners persist in challenging the State's discovery orders in any state or federal court.

In effect, the petitioners have all been adjudged guilty —without trial—of civil contempt, with each petitioner's waiver of the right to challenge the State's discovery operating as the key to that petitioner's own release from confinement.

Over petitioners' objections that they were being penalized in violation of due process for their attempts to vindicate their constitutional rights, App. 246b-47b, 271b-78b, the Superior Court stayed all defensive discovery on July 6, 1979, *id.* at 244b-48b, and extended that stay on August 8, 1979, *id.* at 24a-25a, 281b-82b, on September 21, 1979, *id.* at 26a, and again on December 18, 1979, *see id.* at 28a-29a, on the Attorney General's insistence that something be done to halt petitioners' "concerted and combined effort to avoid discovery." *Id.* at 305b. Accordingly, the Superior Court has invited "any defendant who makes discovery"—that is, any defendant who abandons all further appellate challenges to the State's investigation—"to ask the court to reconsider the order as it might relate to him." *Id.* at 307b, 29a.

The trial court had earlier indicated that even petitioners' invocation of the undenied right to appeal from its injunctive decrees warranted the court's suspicion and thus justified the reimposition of the receivership. *Id.* at 225b-28b, 230b-32b. Indeed, the State's Second Amended Complaint itself alleged, as a reason for the permanent removal of various Church officers, that several of them had attempted to do "everything within their power to deny plaintiff access . . . to the books and records of the Church. . . ." [74]

Thus, being penalized for asserting—and even for associating with others who assert—their rights is not a new experience for petitioners in this case. But the imposition of any such penalty works with especially powerful force at this stage, for it serves as a *de facto* mechanism of enforcement for discovery orders whose validity has not yet been ruled upon by this Court or indeed been subjected to plenary review by any appellate court. And the imposition of such a penalty increases the risk that one or more of the targets of those orders will yield the information demanded in exchange for the opportunity to receive information from the State. The moment any such target yields to the State, of course, the privacy of the Church and of all who depend upon it is to that degree irreparably compromised. *See* n.14 *supra* and pp. 47-50 *infra*.

Whatever its other consequences, the imposition of such an enforcement regime clearly offends due process. Implicit in the rule that discovery, as a matter of due process, "must be a two-way street," *Wardius* v. *Oregon*, 412 U.S. 470, 475 (1973), is the corollary that a state cannot close *its* "side" of the street to punish a defendant for invoking undisputed rights of appellate and collateral review to preserve *his* "side." Moreover, punishing *some* defendants for challenges made by *other* defendants,

[74] Second Amended Complaint ¶¶18, 20, App. 21b-22b.

see n.33 *supra,* violates First Amendment rights of religious association. *Cf. Healy* v. *James,* 408 U.S. 169, 185-86 & n.13 (1972). Beyond that, a state that punishes any defendant for pursuing an avenue of legal redress which the state itself has expressly offered flagrantly violates the due process clause. *See Doyle* v. *Ohio,* 426 U.S. 610, 616-20 (1976); *North Carolina* v. *Pearce,* 395 U.S. 711, 724 (1969); *Raley* v. *Ohio,* 360 U.S. 423, 438 (1959). *Cf.* J. Heller, *Catch-22* (1955).

In addition, the act of seeking judicial review, especially in the federal courts, *see Terral* v. *Burke Construction Co.,* 257 U.S. 529, 532 (1922), represents the exercise of a federal constitutional right—perhaps, indeed, a privilege of national citizenship—independent of anything one might have been offered by the State. As such, the act is one that a state cannot significantly penalize or burden without compelling justification. *See, e.g., Shapiro* v. *Thompson,* 394 U.S. 618, 634 (1969); *United States* v. *Jackson,* 390 U.S. 570, 583 (1968); *Griffin* v. *California,* 380 U.S. 609, 614 (1965).

Finally, the penalty imposed here—denial of the chance to clear one's name of vague public accusations of criminal conduct—itself calls for a level of procedural protection well beyond anything petitioners have yet been accorded; no justification for staying their discovery—beyond the impermissible desire to force them to abandon their challenges to the State's orders—has even been offered. *Cf. Jenkins* v. *McKeithen,* 395 U.S. 411 (1969); *Hannah* v. *Larche,* 363 U.S. 420 (1960); *Joint Anti-Fascist Refugee Committee* v. *McGrath,* 341 U.S. 123 (1951).

For all of these reasons, the Superior Court's stay of defensive discovery—a stay whose lifting is conditioned upon petitioners' waiver of their rights to challenge the State's investigation of the Church—deprives petitioners of rights secured by the Due Process Clause of the Fourteenth Amendment. Unless emphatically repudiated, this technique of coercion could threaten the viability of judicial review itself.

IV.

The Presence of Overlapping Discovery Orders Directed to Numerous Individuals in Addition to the Church Creates an Unacceptably High Risk That Denying Judicial Review Now Would Permit Only Judicial Autopsy Later.

The very issuance of the orders upheld below injures petitioners. The stay of defensive discovery upheld in 2d Civ. No. 57294 has this consequence on its face: each day the stay is in effect, it continues, without justification, to disable petitioners from confronting and refuting the State's damaging accusations of misconduct. *See* App. 246b.

In addition, the discovery orders obtained by the State and upheld in 2d Civ. Nos. 57290, 57291, 57303, 57445, and 57640 constitute a governmental campaign to examine Church deliberations and documents which petitioners have challenged as unconstitutional *per se.* The judgments refusing to set those orders aside thus constitute final rejections of that challenge and, as such, are immediately reviewable determinations that the State's inquiry may proceed unconstrained by the Establishment Clause or by anything else in the First and Fourteenth Amendments.[75]

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[75] Inasmuch as the State makes review by petition for a writ of mandate and/or prohibition available to each target of the State's discovery, *see Daly* v. *Superior Court,* 19 Cal. 3d 132, 140, 137 Cal. Rptr. 14, 19, 560 P.2d 1193, 1198 (1977); *Sav-On Drugs, Inc.* v. *Superior Court,* 15 Cal. 3d 1, 5, 123 Cal. Rptr. 283, 285-86, 538 P.2d 739, 741-42 (1975); *Rudnick* v. *Superior Court,* 11 Cal. 3d 924, 928, 114 Cal. Reptr. 603, 607, 523 P.2d 643, 647 (1974); *Roberts* v. *Superior Court,* 9 Cal. 3d 330, 336, 107 Cal. Rptr. 309, 312, 508 P.2d 309, 312 (1973), the denial of such relief would in any event represent a final—and thus currently reviewable—rejection of petitioners' constitutional challenges to such discovery. *Cf. Williams* v. *Georgia,* 349 U.S. 375, 383-89 (1955). *See also* p. 10 & n.19 *supra.*

Moreover, especially given the punitive effect of the stay upheld in 2d Civ. No. 57294, and the pressure exerted by that stay, the *coercive* aspects of the discovery orders sustained below are likewise ripe for review. The Attorney General's stated intention to press for contempt judgments and various other sanctions against petitioners in the Superior Court on April 2, 1980, *see* n.3 *supra,* adds threatening insult to continuing injury but does not constitute an essential part of the case for treating as final the judgments below and for regarding as ripe the validity of the coercion those judgments, without more, already embody.[76]

Indeed, even without the pressure exerted by the stay order, the coercive cross-fire of the discovery orders themselves would suffice to establish an issue ripe for review. For those orders, which overlap significantly in content, place the privacy of each of their targets at the mercy of all others from whom discovery is sought. And it is settled that federal judicial challenge to a discovery order cannot be deemed premature—even prior to any attempted enforcement—where that order is directed, as it is here, to a third party who "could not be expected to resist . . . by placing itself in contempt." *Eastland* v. *United States Servicemen's Fund,* 421 U.S. 491, 514 (1975) (Marshall, J., joined by Brennan and Stewart, JJ., concurring in judgment); *id.* at 501 n.14 (majority opinion).[77]

[76] Nor does the possible entry of contempt judgments and further sanctions constitute a reason to defer review, since (1) a coercive decree analogous to civil contempt *already* reinforces the orders at issue, *see* p. 44 *supra,* and poses a continuing risk that compliance by one or more persons or entities might occur at any moment; and (2) an order to a third party who cannot be counted upon to suffer contempt is ripe for review at the behest of anyone whose rights would be compromised by the third party's compliance with the order. *See* n.10 *supra* & nn.77-78 *infra.* In sum, awaiting the outcome of possible contempt proceedings would create an unacceptable risk that the questions here would become moot before they could be resolved.

[77] The *Eastland* Court was unanimous on this issue.

If the federal judiciary should refuse to inquire preventively into the validity of such challenged orders—and of the claims of authority that underlie them—then "compliance by the third person [could] frustrate any judicial inquiry." *Id.* It follows that the Church's federal constitutional right is *to have such orders set aside* and not merely to contest their direct enforcement after the fact. *See Perlman* v. *United States,* 247 U.S. 7, 12-13 (1918).[78]

Were this Court to deny review now, the federal constitutional questions that are ripely presented by the series of orders upheld below could well be mooted for all time by acts of compliance by former Church officials or others who are either neutral or hostile to the Church and whose acts the Church and those still loyal to it would be helpless to forestall. The right of the Church to protect its privacy and that of its members from such state-induced actions by others, *cf. NAACP* v. *Alabama ex rel. Patterson,* 357 U.S. 449 (1958), can be preserved only by review now. As the Chief Justice has observed, compliance with unlawful demands for information "cause[s] irreparable injury" insofar as one "cannot always 'unring the bell' once the information has been released." *Maness, supra,* 419 U.S. at 460.[79] Beyond that, the separate claim that this entire investigation violates the Establishment Clause—and would do so notwithstanding any acquiescence by those from

[78] *See also Velsicol Chemical Corp.* v. *Parsons,* 561 F.2d 671, 673-74 (7th Cir. 1977), *cert. denied,* 435 U.S. 942 (1978); *United States* v. *Doe,* 455 F.2d 753, 756-57 (1st Cir.), *vacated and remanded on other grounds sub nom. Gravel* v. *United States,* 408 U.S. 606 (1972); *Matter of Grand Jury Impaneled January 21, 1975 (two cases),* 541 F.2d 373, 377 & n.4 (3d Cir. 1976); *Pollard* v. *Roberts,* 283 F. Supp. 248, 254, 259 (E.D. Ark.) (three-judge court), *aff'd mem.,* 393 U.S. 14 (1968) (per curiam). *See also United States* v. *Nixon,* 418 U.S. 683, 691-92 (1974). *Cf. Liberation News Service* v. *Eastland,* 426 F.2d 1379, 1384 n.10 (2d Cir. 1970).

[79] *See* n.14 *supra.* When petitioners made *this very point* to the Superior Court, App. 219b, the Superior Court simply replied: "That is something I can't do anything about."

whom the State seeks information, *cf. Lemon* v. *Kurtzman*, 403 U.S. 602, 619-20 (1971)—could not possibly be posed more starkly than it is here.

CONCLUSION

Because other religious groups might be more easily subdued than the Church of God has thus far been, this petition may well represent the last clear chance for this Court to bring under control a novel and frightening governmental assault upon both liberty and property, an assault that proceeds by obliterating time-honored boundaries between the private and the public, as well as between church and state. Both the massive and flagrant nature of the abuses of civil discovery sustained by the judgments below, and the extraordinary danger of a regime of entanglement in which few long resist but all ultimately suffer, strongly support review by this Court on writ of certiorari.

Respectfully submitted,

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(617) 495-4621

Counsel for Petitioners

February 29, 1980.

Appendix A

Court of Appeal Judgment (2d Civ. No. 57303) September 18, 1979

IN THE
COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

2nd Civil No. 57303

(Super. Ct. No. C267607)

HERBERT W. ARMSTRONG, Pastor General of the Worldwide Church of God,

Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent,

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

ORDER

THE COURT:

The petition for writ of mandate and/or prohibition, filed herein on September 13, 1979, has been read and considered. The petition is denied.

FILED
Sept. 18, 1979
CLAY ROBBINS, JR. Clerk

Superior Court Order, March 13, 1979

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DATE MARCH 13, 1979

HONORABLE THOMAS T. JOHNSON, *Judge*

R. HART, *Deputy Clerk*

C267607
The People of the State of California, et al
vs
Worldwide Church of God, etc., et al

NATURE OF PROCEEDINGS.

Motion of defendants for order compelling appearance at depositions

and

compelling deponents to answer questions propounded at depositions

and

Motion for sanctions

In this matter previously taken under submission, the Court now rules as follows:

Appearances for the purpose of the taking of depositions are ordered as follows·

1. Stanley R. Rader
2. Benjamin Chapman
3. Chester Roberson
4. C. Wayne Cole
5. David Morgan

6. Robert Kuhn
7. David Antian
8. A. Sheridan Atkinson
9. Herbert W. Armstrong
10. Steven S. Weisman
11. Lawrence R. Tapper
12. Hillel Chodos

It is further ordered that the hearing of this matter be reconvened at 10:30 A.M., Wednesday, *March 21, 1979,* for the sole purpose of setting dates, times and places for the taking of said depositions, all said depositions to continue from day to day until completed.

A copy of this minute order is mailed to all parties.

DEPT. 80

MINUTES ENTERED
March 13, 1979
County Clerk

Superior Court Order, July 19, 1979

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Dated July 19, 1979

Honorable Thomas T. Johnson, *Judge*

J. Schmuki, *Deputy Clerk*

C 267 607

The People of the State of California

vs

Worldwide Church of God Inc.,
a California corp, et al

NATURE OF PROCEEDINGS

Matter having been submitted on July 6, 1979, the court now rules as follows:

Re submitted matters, re depositions of Herbert Armstrong;

The court has read and considered all documents relating to this matter, including defendant's supplemental memorandum filed July 13, 1979, and Mr. Brown's letter to this court dated July 18, 1979.

Plaintiff's motion is granted.

A commission will issue to take the deposition of J. Herbert Armstrong in the state of his residence on a date in August to be selected by plaintiff.

Superior Court Order, July 19, 1979

Plaintiff's counsel to supply documents.

Plaintiff's counsel to give notice.

Copy of this minute order mailed by the clerk by USMail.

DEPT. 80

MINUTES ENTERED
July 19, 1979
County Clerk

Appendix B

Court of Appeal Judgment (2d Civ. No. 57291) September 28, 1979

IN THE

COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

2d Civil No. 57291

(Super. Ct. No. C 267607)

ORDER

WORLDWIDE CHURCH OF GOD, INC., a California corporation; AMBASSADOR COLLEGE, INC., a California corporation; AMBASSADOR INTERNATIONAL CULTURAL FOUNDATION, a California corporation; WORLDWIDE ADVERTISING, INC., a California corporation; GATEWAY PUBLISHING, INC., a California corporation; HERBERT W. ARMSTRONG; STANLEY R. RADER; HENRY CORNWALL; and RALPH HELGE,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,

Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

Court of Appeals Judgment, September 28, 1979

THE COURT:

The petition for writ of mandate, filed herein on September 7, 1979, has been read and considered. The petition is denied.

(Filed: 9/28/79)

Superior Court Order, August 8, 1979

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Date August 8, 1979
Honorable T. T. Johnson, *Judge*

J. Schmuki, *Deputy Clerk*
L. Sartario, *Reporter*

C 267 607
The People of the State of California

VS

Worldwide Church of God, Inc.,
a Cal non-profit corp, et al.,

Counsel for Plaintiff

George Deukmejian, W. Brainard, J. Condi

Counsel for Defendant

George Schravelli, Allan Brown, Ellis Horvitz

NATURE OF PROCEEDINGS

Motion of plaintiff compelling further responses to interrogatories propounded by plaintiff to defendants Ambassador College, Inc., Worldwide Church of God, Inc., and Ambassador International Cultural Foundation (Set No. 1)

and

for attorneys fees

Matter is argued and submitted.

Superior Court Order, August 8, 1979

LATER:

Defendants Ambassador College Cultural Foundation, Ambassador College and Worldwide Church of God are ordered to serve further answers, without objection, to the following interrogatories served May 18, 1979, within 30 days after service of notice of this order:
Interrogatories #s; all per motion.

Moving party to give notice.

Copy of this order mailed by the clerk by USMail.

DEPT. 80

MINUTES ENTERED
August 8, 1979
County Clerk

Superior Court Order, August 31, 1979

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Dated August 31, 1979

Honorable T. T. Johnson, *Judge*

J. Sweet, *Deputy Clerk*

C 267 607
The People of the State of California

vs.

Worldwide Church of God, Inc., Etc.,
et al

NATURE OF PROCEEDINGS

Motion of plaintiff compelling further responses to requests for production of documents and things and for inspection and copying.

Within 30 days, defendants are ordered to produce to plaintiff at time and place of plaintiff's selection, items 1 through 18, per motion, which plaintiff may inspect and copy.

Copies of this minute order are mailed to counsel.

DEPT. 80

MINUTES ENTERED
August 31, 1979
County Clerk

Appendix C

Court of Appeal Judgment (2d Civ. No. 57640)
October 22, 1979

IN THE

COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

2d Civil No. 57640

(Super. Ct. No. C 267607)

ORDER

WORLDWIDE CHURCH OF GOD, INC., a California corporation; AMBASSADOR COLLEGE, INC., a California corporation; AMBASSADOR INTERNATIONAL CULTURAL FOUNDATION, a California corporation; WORLDWIDE ADVERTISING, INC., a California corporation; GATEWAY PUBLISHING, INC., a California corporation; HERBERT W. ARMSTRONG; STANLEY R. RADER; and HENRY CORNWALL,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,

Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

Court of Appeals Judgment, October 22, 1979

THE COURT:

The petition for writ of mandate, filed herein on October 22, 1979, has been read and considered. The petition is denied.

(Filed: 10/22/79)

Superior Court Order, September 21, 1979

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Dated Sept. 21, 1979

Honorable T. T. Johnson, *Judge*

J. Schmuki, *Deputy Clerk*

L. Sartario, *Reporter*

C 267 607

The People of the State of California

vs

Worldwide Church of God, Inc.,
a Cal Non-profit corp, et al.,

Counsel for Plaintiff

George Deukmejian, Lawrence R. Tapper, James M. Cordi

Counsel for Defendant

William S. Abbey, L. Brainard, Allan Gabriel, Allan Brown, Ralph Helge

NATURE OF PROCEEDINGS

Motion of plaintiff compelling further response to request to Henry Cornwall for production of documents

and

things

and

for inspection and copying

Superior Court Order, September 21, 1979

Motion of plaintiff compelling further response to request to Stanley R. Rader for production of documents and things and for inspection and copying.

Matters argued and submitted.

LATER:

Motion granted; produce all but Item #18 and any W-2 Forms requested, within 45 days.

Motion granted, produce all but numbers 21 and 24, and any W-2 Forms requested, at, or before, deposition set for 10:30 AM October 22, 1979.

DEPT. 80

MINUTES ENTERED
Sept. 21, 1979
County Clerk

Appendix D

Court of Appeal Judgment (2d Civ. No. 57290)
October 4, 1979

IN THE

COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

2d Civil No. 57290

(Super. Ct. No. C267607)

RALPH K. HELGE and HENRY CORNWALL,

Petitioners,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,

Respondent,

PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

ORDER

THE COURT:

The petition for writ of mandate, filed herein on September 7, 1979, has been read and considered. The petition is denied.

F I L E D
Oct. 4, 1979
CLAY ROBBINS, JR. Clerk

Superior Court Order, August 8, 1979

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DATE August 8, 1979

HONORABLE T. T. JOHNSON, *Judge*

J. SCHMUKI, *Deputy Clerk*

C 267 607

The People of the State of California

vs

Worldwide Church of God Inc., a California corp, et al.

NATURE OF PROCEEDINGS.

1. Motion of defendant, Ralph K. Helge, in association with other attorneys for defendant to dismiss complaint for lack of jurisdiction

or

in the alternative, for a protective order that the deposition of defendant Ralph K. Helge not be taken

or

that it shall not be taken except by allowing written interrogatories

(third cont)

Matters submitted on August 7, Court now rules as follows:

1. Motion denied.

35 A

2. Motion of defendants, Worldwide Church of God, Inc., Ambassador College, Inc., Ambassador International Cultural Foundation, Inc., Herbert W. Armstrong, Stanley R. Rader, Ralph Helge, Gateway Publishing, Inc., Worldwide Advertising, Inc., and Henry Cornwall for judgment on the pleadings

2. Motion denied.

3. Notice of request of the above defendants for judicial notice in conjunction with motion for judgment on the pleadings

3. Judicial notice taken.

DEPT. 80

MINUTES ENTERED
Aug. 8, 1979
County Clerk

Superior Court Order, September 21, 1979

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Dated Sept. 21, 1979

Honorable T. T. Johnson, *Judge*

J. Schmuki, *Deputy Clerk*

L. Sartario, *Reporter*

C 267 607

The People of the State of California

vs

Worldwide Church of God, Inc.
a Cal Non-profit Corp, et al.,

Counsel for Plaintiff

George Deukmejian, Lawrence R. Tapper, James M. Cordi

Counsel for Defendant

William S. Abbey, L. Brainard, Allan, Gabriel, Allan Brown, Ralph Helge

NATURE OF PROCEEDINGS

Motion of plaintiff compelling further response to request to Henry Cornwall for production of documents

and

things

and

for inspection and copying

Superior Court Order, September 21, 1979

Motion of plaintiff compelling further response to request to Stanley R. Rader for production of documents and things and for inspection and copying.

Matters argued and submitted.

LATER:

Motion granted; produce all but Item #18 and any W-2 Forms requested, within 45 days.

Motion granted, produce all but numbers 21 and 24, and any W-2 Forms requested, at, or before, deposition set for 10:30 AM October 22, 1979.

MINUTES ENTERED
Sept. 21, 1979
County Clerk

Appendix E

Court of Appeal Judgment (2d Civ. No. 57445) October 4, 1979

ORDER

In the Court of Appeal of the State of California, Second Appellate District, Division Three.

Worldwide Church of God, Inc., a California corporation; Ambassador College, Inc., a California corporation; Ambassador International Cultural Foundation, a California corporation; Worldwide Advertising, Inc., a California corporation; Gateway Publishing, Inc., a California corporation; Herbert W. Armstrong; Stanley R. Rader; Henry Cornwall; and Ralph Helge, Petitioners, v. Superior Court of the State of California for the County of Los Angeles, Respondent, The People of the State of California, Real Party in Interest. 2d Civil No. 57445, (Super. Ct. No. C267607).

Filed: Oct. 4, 1979.

THE COURT:

The petition for writ of mandate, filed herein on September 28, 1979, has been read and considered. The petition is denied.

Superior Court, August 31, 1979

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Date August 31, 1979

Honorable T. T. Johnson, *Judge*

J. Sweet, *Deputy Clerk*

C 267 607

The People of the State of California

vs.

Worldwide Church of God, Inc., Etc., et al

Counsel for Plaintiff

George Deukmejian, Lawrence R. Tapper, James M. Cordi

Counsel for Defendant

William S. Abbey, L. Brainard, Ralph Helge, Allan Brown, Roy Brisbois

NATURE OF PROCEEDINGS

Motion of plaintiff for protective order under CCP 2019(b) and 2019(d)

and

for reasonable expenses including attorney's fees

In this matter, previously submitted August 29, 1979, the Court rules as follows:

Superior Court Order, August 31, 1979

Deposition of the witnesses Kuhn and Antion, is to resume at the convenience of counsel for the plaintiff and the witness.

The documents listed in Exhibit "A" of the Helge declaration filed herein 8-20-79, are to be utilized as follows: these numbers are to be made available for use by plaintiff at said deposition: (Kuhn) 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 35, 36, 37, 38, 39, 40, 85, 97, 277 through 298; (Antion) 41, 42, 43, 44, 45, 46, 48, 49, 139, 140, 141, 143, 144, 147, 157, 159, 164, 165, 167, 168, 169, 176, 177, 178, 179, 180, 181, 183, 299, 300, 301, 302; (Cole) 53, 54, 55, 184, 189, 191, 194, 202, 271, 272, 273, 274, 303, 304, 305;.

Within 30 days the following numbers are to be supplied this Court for examination "In Camera", prior to their possible use in a resumption of said deposition: (Kuhn) 3, 11, 18, 21, 31, 34, 49, 50, 51, 52, and 56 through 138 except for 85 and 97; (Antion) 170, 171, 172, 173, 174, 175, 182, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 160, 161, 162, 163, 166, 142, 145, 146; (Cole) 185, 187, 190, 192, 193, 198, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 222, 223, 224, 225, 226, 227, 228, 230, 231, 232, 239, 243, 259, 265, 260, 265, 268, 270, 276.

MINUTES ENTERED

August 31, 1979
County Clerk

Appendix F

Court of Appeal Judgment (2d Civ. No. 57294) October 4, 1979

ORDER

In the Court of Appeal of the State of California, Second Appellate District, Division Three.

Worldwide Church of God, Inc., a California corporation; Ambassador College, Inc., a California corporation; Ambassador International Cultural Foundation, a California corporation; Worldwide Advertising, Inc., a California corporation; Gateway Publishing, Inc., a California corporation; Herbert W. Armstrong; Stanley R. Rader; Henry Cornwall; and Ralph Helge, Petitioners, v. Superior Court of the State of California for the County of Los Angeles, Respondent.

The People of the State of California, Real Party in Interest. 2d Civil No. 57294, (Super. Ct. No. C267607).

Filed: Oct. 4, 1979.

THE COURT:

The petition for writ of prohibition and/or mandate, filed herein on September 11, 1979, has been read and considered. The petition is denied.

Superior Court Order, August 8, 1979

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DATE August 8, 1979

HONORABLE T. T. JOHNSON, *Judge*

J. SCHMUKI, *Deputy Clerk*

C 267 607

The People of the State of California,

vs

Worldwide Church of God, Inc., etc. et al.

NATURE OF PROCEEDINGS.

4. Motion of plaintiff for order holding Stanley Rader in contempt compelling S. R. Rader to appear for his deposition and for protective order

and

sanctions

Defendant Rader, ordered to appear for deposition 10:00 AM, on August 27, 1979, plaintiff's attorney's office, and to be deposed throught 12:00 Noon on August 28, 1979; any resumption to be set at later date by agreement.

Stay on defendant's discovery to September 21, 1979, except depositions of Chapman's on August 20 and 21, 1979, and of Justice on August 24, 1979.

5. Motion of defendants to dismiss complaint for lack of jurisdiction

or

in the alternative for a protective order that the deposition of defendant Henry F. Cornwall not be taken, or that it shall not be taken except by allowing written interrogatories

Motion denied.

Plaintiff to give notice.

Copy of this minute order mailed by the clerk by US Mail.

DEPT. 80

MINUTES ENTERED
[Aug. 8, 1979]
County Clerk

Superior Court Order, September 21, 1979

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

Date Sept. 21, 1979

Honorable T. T. Johnson, *Judge*

J. Schmuki, *Deputy Clerk*

C 267 607

The People of the State of
California, ex rel, Alvin
Earl Timmons, et al.,

vs

Worldwide Church of God, Inc., et al.,

Counsel for Defendant

Ervin, Cohen and Jessup

NATURE OF PROCEEDINGS

Motion of defendants for order continuing
the deposition of Stanley R. Rader

Defendant, Rader, is ordered to appear for deposition at office of Attorney General's, Los Angeles, at 10:30 AM, October 22, 1979 and to give deposition continuing day to day and resume through to 4:30 PM on October 25, 1979, resumes at the time per witness to be resumed.

All discovery by defendants is stayed to hearing date of 11-26-79.

Superior Court Order, September 21, 1979

Attorney General counsel to give notice.

Copy of this minute order mailed by the clerk by USMail.

Continued to November 26, 1979 in Dept. 80 at 9:00 AM on court's own motion.

DEPT. 80

MINUTES ENTERED
Sept. 21, 1979
County Clerk

Superior Court Order, December 18, 1979

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DATE December 18, 1979

HONORABLE THOMAS T. JOHNSON, *Judge*

G. REGALADO, *Deputy Clerk*

C 267607

THE PEOPLE OF THE STATE OF
CALIFORNIA, ET AL.
WORLDWIDE CHURCH OF GOD, INC., ET AL.

Counsel for Plaintiff

JAMES CORDI

Counsel for Defendant

ALLAN BROWNE
RALPH HELGE

NATURE OF PROCEEDINGS.

PROTECTIVE ORDER RE STAY OF DISCOVERY OF DEFENDANTS.

ON MATTER PREVIOUSLY TAKEN UNDER SUBMISSION ON DECEMBER 6, 1979 THE COURT MAKES THE FOLLOWING ORDER:

PLAINTIFF SHOULD NOTICE THE TAKING OF MR. HELGE'S DEPOSITION AND MR. HELGE SHOULD PARTICIPATE.

Superior Court Order, December 18, 1979

DISCOVERY BY ALL DEFENDANTS IS STAYED PENDING FURTHER ORDER OF COURT.
ANY DEFENDANT MAKING DISCOVERY MAY ADVISE COURT OF THAT FACT AND REQUEST MODIFICATION OF THIS ORDER.

PLAINTIFF TO DRAFT ORDER AND GIVE NOTICE.

A COPY OF THIS ORDER TO COUNSEL AS INDICATED ABOVE VIA U.S. MAIL THIS DATE.

DEPT. 80
MINUTES ENTERED
12-18-79
County Clerk

Appendix G

California Corporation Code § 9505

Supervision of Attorney General Where Property Held in Trust.—A non-profit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure.

Appendix H

California Nonprofit Religious Corporation Law § 9230

(effective Jan. 1, 1980)

Purposes: Protection of membership lists: Actions (a) Upon reasonable grounds to believe that the following condition or conditions have occurred or do exist, the Attorney General may, at reasonable times, examine a corporation to determine whether:

(1) The corporation fails to qualify as a religious corporation under this part; or

(2) There is or has been any fraudulent activity in connection with the corporation's property; or

(3) Any corporate property is or has been improperly diverted for the personal benefit of any person; or

(4) Property solicited and received from the general public, based on a representation that it would be used for a limited purpose other than general support of the corporation's religious activities, has been improperly used in a manner inconsistent with the stated purpose for which the property was solicited; or

(5) There has been a substantial diversion of corporate assets from stated corporate purposes.

(b) Such examination shall respect privileges enumerated in Division 8 (commencing with Section 900) of the Evidence Code and shall protect the confidential nature of membership lists by using such lists only in connection with the examination and any subsequent court proceeding. In addition, such examination shall not unnecessarily interfere with normal operations and religious observances of the corporation.

California Nonprofit Religious Corporation Law § 9230 (effective Jan. 1, 1980)

(c) The Attorney General may institute an action in the name of the state to enforce the right of examination set forth in subdivision (a).

(d) For reasonable cause, the Attorney General may institute an action in the name of the state:

(1) To establish that the corporation fails to qualify as a religious corporation under this part, and if a court so finds it shall enter an order that the corporation shall no longer operate as a religious corporation under this part.

(2) To correct any wrongful activity which has taken place in connection with or as a result of any condition or conditions set forth in paragraph (2), (3), (4) or (5) of subdivision (a).

Appendix I

Uniform Supervision of Trustees For Charitable Purposes Act § 12581

Charitable corporations and trustees to whom article applies. This article applies to all charitable corporations and trustees holding property for charitable purposes over which the State or the Attorney General has enforcement or supervisory powers.

Uniform Supervision of Trustees For Charitable Purposes Act § 12583

Trustees to whom article does not apply. This article does not apply to the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions, to any religious corporation sole or other religious corporation or organization which holds property for religious purposes, or to any officer, director, or trustee thereof who holds property for like purposes, to a cemetery corporation regulated under Chapter 19 of Division 3 of the Business and Professions Code, or to a charitable corporation organized and operated primarily as a religious organization, educational institution or hospital.

Appendix I-1

Notice of Filing of California Supreme Court Orders Denying Review of Judgments of Court of Appeal

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

Nov. 16, 1979

I have this day filed Order .....

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HEARING DENIED

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In re: 2 Civ. *No.* 57294

Worldwide Church of God

vs.

Superior Court, Los Angeles

Respectfully,

G. E. BISHEL
Clerk

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

Nov. 16, 1979

I have this day filed Order .....

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HEARING DENIED

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In re: 2 Civ. *No.* 57291

Worldwide Church of God

vs.

Superior Court, Los Angeles

Respectfully,

G. E. BISHEL
Clerk

Appendix I-1—Notice of Filing of California Supreme Court Orders Denying Review of Judgments of Court of Appeal

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

Nov. 16, 1979

I have this day filed Order .....

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HEARING DENIED

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In re: 2 Civ. *No.* 57445

Worldwide Church of God

vs.

Superior Court, Los Angeles

Respectfully,

G. E. BISHEL
Clerk

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

Nov. 16, 1979

I have this day filed Order .....

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HEARING DENIED

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In re: 2 Civ. *No.* 57303

Armstrong

vs.

Superior Court, Los Angeles

Respectfully,

G. E. BISHEL
Clerk

Appendix I-1—Notice of Filing of California Supreme Court Orders Denying Review of Judgments of Court of Appeal

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

Nov. 16, 1979

I have this day filed Order .....

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HEARING DENIED

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In re: 2 Civ. *No.* 57290

Helge and Cornwall

vs.

Superior Court, Los Angeles

Respectfully,

G. E. BISHEL
Clerk

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

Nov. 21, 1979

I have this day filed Order .....

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HEARING DENIED

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In re: 2 Civ. *No.* 57640

Worldwide Church of God

vs.

Superior Court, Los Angeles

Respectfully,

G. E. BISHEL
Clerk